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The Solicitors' Journal

[Established 1857.] [Registered as a Newspaper.]

VOL. LXXVIII. No. 48 [Pages 845 to 864]. **Saturday, December 1, 1934.** Published Weekly. Price One Shilling.

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The Solicitors' Journal

VOL. LXXVIII. **Saturday, December 1, 1934.** No. 48

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Current Topics.

The Master of the Temple.

THE appointment of The Rev. Dr. CARPENTER to the Deanery of Exeter creates a vacancy in the ancient and dignified office of Master of the Temple. This title, which can hardly be said to be self-elucidatory, is that applied to the senior in point of rank of the two ecclesiastical dignitaries attached to the Temple church, the junior being designated the Reader. The office goes back at least to 1540, in which year one WILLIAM ERMESTED filled the post. Since that date there have been not a few Masters whose names are still remembered as distinguished in their day and generation, among these, and perhaps in some respects the most remarkable of them all, being RICHARD HOOKER, whose work "Of the Laws of Ecclesiastical Polity" is one of the classics of our literature. Of his successors may be recalled JOHN GAUDEN, the reputed author of "Eikon Basilike"; two SHERLOCKS, father and son, the latter afterwards becoming Bishop of London; and coming down to later days, and within the memory of many of us, two very notable Masters, CHARLES JOHN VAUGHAN and his successor ALFRED AINGER, the former notable by his many contributions to Pauline exegesis and by several volumes of sermons which were said to be the only examples of this species of literature ever found on the bookshelves of chambers in the Temple, and the latter by his admirable biography, and editions of the writings, of CHARLES LAMB. The appointment to the Mastership is in the gift of the Crown, being specially reserved in the patent of 1608 granting the Temple and the church to the Benchers of the two Inns. A spacious house goes with the office, and according to a note by the late Mr. A. R. INGPEN, K.C., in "Master Worsley's Book," there are preserved in the house the armchair and writing table of RICHARD HOOKER and a portrait of Dr. THOMAS SHERLOCK, these being the joint property of the two Inns.

Diversity of Practice.

IN one of his books the late Mr. AUGUSTINE BIRRELL (who by the way added a word to the language from his name as is testified by its inclusion in the new edition of the Concise Oxford Dictionary) told us that in the old days, before the fusion of law and equity, the disappointed suitor as he emerged from a common law court might be heard to mutter, in no cheerful tone, "Well, if this is law give me equity," while if the scene of his discomfiture was a court of equity, his disgruntled remark would be, "If this is equity give me law!" After the fusion from which such great things were expected that particular complaint was assumed to be no longer open to the defeated litigant, for was it not declared that the same rules of law were to be administered in all the courts, and that where theretofore law and equity were at variance equity was to prevail? We have had fusion now for many years, and we know that legal principles are applied alike in the King's Bench as in the Chancery Division, but it would appear that there has not been a perfect assimilation in certain matters of practice between these two Divisions. In the recent case of *Dawson* v. *Hill* [1934] W.N. 218, the Court of Appeal had to consider the competency of an appeal in a matter of practice and procedure from a King's Bench judge sitting in chambers to himself sitting in court. The particular judge, TALBOT, J., held that it was not, and his view was affirmed by the Court of Appeal. It appeared, however, that a different rule obtains in the Chancery Division—a practice which GREER, L.J., said he found it difficult to reconcile with s. 62 of the Judicature Act, 1925. Whether it can or cannot be reconciled was not decided in the case referred to, but there seems to be something to be said for the practice. In other systems of law it has sometimes been permissible to ask the judge to re-consider his decision, but no doubt the tendency has been for any mistake, if there be one, to be corrected only by an appellate tribunal.

The King's Bench Division: Royal Commission.

THE Prime Minister intimated in the House of Commons last Tuesday that the King has been pleased to approve the setting up of a Royal Commission to inquire into the state of business in the King's Bench Division of the High Court of Justice, and—to quote the terms of reference—"to report whether, with a view to greater dispatch, any reforms should be adopted, and in particular what is the judicial strength required to deal with the business, whether there should be any further fusion or further sub-division of the Divisions of the Supreme Court, whether any alterations should be made in the circuits of the Judges, whether any further measure should be taken for the devolution of work

from the High Court to the county court, and whether a retiring age should be imposed upon those appointed in the future to the Bench of the Supreme Court." The following will be the Members of the Commission: Lord PEEL (chairman), Lord HANWORTH, M.R., Mr. J. G. ARCHIBALD, who is a solicitor, Mr. E. CLEMENT DAVIES, K.C., M.P. for Montgomery, Mr. W. T. MONCKTON, K.C., Attorney-General to the Prince of Wales and Recorder of Hythe, Mr. H. L. MURPHY, who is a member of the Bar, and Sir CLAUD SCHUSTER, K.C., Secretary to the Lord Chancellor. The Prime Minister explained that the terms of reference and the pledge on which the Commission had been set up were confined to inquiring into the state of business in the King's Bench Division and dealing with the delay in the dispatch of business, and did not extend to the investigation of questions regarding the cheapening of litigation. This appears to be a good answer to criticism based on the predominantly legal character of the personnel of the Commission, but it is, perhaps, to be regretted that room could not be found for a fuller representation of the solicitors' branch of the profession.

Business of the Session.

THE heavy programme before Parliament in the present session was alluded to in our last issue. It is now possible to give more detailed particulars of the business to be transacted and the time available for it before prorogation at the end of next July. From the Prime Minister's speech in support of his motion to take private members' time for the remainder of the session, it appears that the time available, after making allowance for the Christmas, Easter and Whitsun recesses, was 108 full Parliamentary days. Routine business, including thirty-three days for Supply, thirteen or fourteen for the Budget and Finance Bill, will absorb fifty-seven days, while a certain number will be required for adjournment motions or other contingencies. A total allowance of sixty-five days for all these matters leaves only forty-three for government business, which includes the India Constitution Bill, the Shipping Industries Bill, Housing Bills for England and Scotland, the Depressed Areas Bill and the Electricity Supply Bill. Other Bills, it was intimated, might become urgent in the meantime. Moreover, as the Prime Minister said, "Every one who has planned Parliamentary Session time knows that he has never yet succeeded in saving time on his first plan, but as time goes on new requirements crop up, and instead of having a comfortable margin, about the middle of July he discovers that he is always some days in arrear." The decision to take private members' time appears to have been inevitable in the circumstances.

New Motor Law.

THE Minister of Transport has made a new Order, which will come into force on January next and governs the hours of work of drivers of goods vehicles operated under A and B licences issued in England and Wales. The Order permits the holders of such licences (*a*) to drive continuously for a period of eight hours if they are only on duty for one period not exceeding eight hours in a day, and if they have at least an aggregate of forty minutes rest, of which a period of not less than twenty minutes must be taken between two and five hours after the time at which they begin the eight-hour period of duty, and (*b*) in the case of drivers engaged by the week to drive for twelve hours in all on two days a week if some part of the twelve hours is spent in waiting or loading or unloading a vehicle, and one complete day's rest is allowed in each week. The foregoing Order has been made in response to a request by the National Joint Conciliation Board for the Road Motor Transport Industry (Goods) for the variation of the working periods prescribed by s. 19 of the Road Traffic Act, 1930. It is intimated that a special organisation is to be set up to undertake the tests of new drivers under the Act of 1934. The testers will work under the direct control of the Ministry and independently of the police or the local authorities. The exact form which the tests will take will be made known early in 1935. Specimens of the proposed speed regulation signs relating to the thirty-mile an hour limit for "built up" areas were recently on view in the tea room of the House of Commons. That announcing the limit is circular, 18 inches in diameter, showing the figures "30" in black on a white ground within a red ring. The end of a limit is to be indicated by an 8-inch disc with a black bar on white. If the exhibition of these signs could be carried a stage further before their general appearance on the roads, it is probable that they would escape much of the criticism to which new objects by their very unfamiliarity are apt to give rise.

Preservation of Buildings under Housing and Planning Acts.

ONE aspect of slum clearance which has not, perhaps, received the attention it deserves is the danger of loss by demolition of interesting buildings. Sir HILTON YOUNG, Minister of Health, dealing with the position in a recent letter to a correspondent, expresses his conviction that everything possible should be done to preserve beautiful and interesting houses, and particularly fine old cottages, subject to the overriding principle that no human being should live in an unfit house. Sir HILTON points out that a house which the owner undertakes to make fit need not be pulled down if the local authority is satisfied that he can, and will, do the necessary work. Moreover, in an appropriate case, a local authority may accept an undertaking that a particular house will not be used for human habitation. It may then be allowed to stand and the full subsidy paid for providing accommodation in its place. In the case of agricultural dwellings the owner can be assisted to the extent of two-thirds of the money needed for reconditioning up to £100, while a local authority, under the Town and Country Planning Act, 1932, can make an order directing that a building of special architectural or historic interest shall not be demolished without their consent. Such an order is subject to the approval of the Minister of Health in consultation with the First Commissioner of Works and compensation is payable to the owner for any loss. The Minister, in the letter referred to, advocates "an enlightened use" of the aforesaid powers.

Overcrowding Bill.

WE have already devoted some space to the legislative measures it is proposed to take in order to combat the evils of overcrowding. Further particulars, derived from an address by the Minister of Health at the conference of the National Housing and Town Planning Council recently held at Southport, are now available. Sir HILTON YOUNG emphasised the importance of the preliminary survey, which he described as the key to success. It will be for the local housing authorities to propose their own plans for the purpose of providing the number and type of dwelling which the survey shows to be necessary. The fact that many people living in overcrowded houses cannot be removed far from their existing place of abode is recognised, together with its concomitant—the re-planning of those areas. Local authorities will be given powers of compulsory acquisition of and reconditioning wage-earners' dwellings, and in such cases the basis of compensation will, in general, be market values. It is also intimated that proposals will be made to overcome, without hardship to the occupier, the difficulty caused by the Rent Restriction Acts to an owner who desires to improve his property. The provisions of the Bill will apply, with adaptations, to rural areas. An appointed day for the coming into operation of the Act will be fixed, after which overcrowding will be illegal, suitable provision being made where overcrowding existing prior to the day cannot be remedied for lack of additional accommodation.

Road Federation on Ribbon Development.

THE British Road Federation which has recently approached the Minister of Transport ascribes ribbon development to the exploitation of new roads by land owners and speculative builders. As long as twenty-five years ago the Development and Road Improvement Funds Act, 1909, gave highway authorities the power to restrict building along a new road, but, the Federation states, "through want of courage or of vision, advantage was not taken of this." The Town and Country Planning Act, 1932, which empowers town-planning authorities to limit the number of side streets entering a classified road and, in most cases, compels landowners and builders to provide their own service roads, is alluded to together with the special Acts relating to Surrey, Essex and Middlesex. The Federation advocates a general Act, extending to all county councils together with a definite obligation on the part of each authority to enforce its provisions, both in regard to new and unspoilt areas and to existing main roads where ribbon development has started but can be stopped. It is suggested that many existing arterial roads would be improved by the cutting through the grass margins of additional carriageways where necessary for the accommodation of local traffic.

Entering Appearance.

IN the course of a statement recently made on taking his seat, CLAUSON, J., alluded to a case lately before him in which counsel appeared for a respondent to a motion which was fought at some length and disposed of. The learned judge was told at the last moment that an appearance had not been entered but that the irregularity would be put right at once. Appearance was not entered for nearly three weeks. The duty of entering appearance in such circumstances was thus stated by the learned judge: "When counsel for a respondent to a motion addresses the court, the court assumes and counsel impliedly represents that he is properly instructed by the solicitor on the record for a party who has duly entered appearance. It occasionally happens that, owing to the exigencies of time, appearance has not actually been entered at the moment when counsel addresses the court. In such a case it is the duty of the solicitor to inform counsel of this, and it is the duty of counsel to inform the judge of it. If the judge consents (as sometimes is found convenient) to hear counsel notwithstanding the irregularity, it is necessarily the duty of all concerned to restore regularity at once. Counsel must not forget to impress on the solicitor that appearance must be entered forthwith, an undertaking by counsel on his client's behalf so to enter appearance being in the circumstances necessarily implied, and it is the solicitor's duty to enter appearance immediately."

Motor Insurance Premiums.

ONE of the results of the increase of traffic on the roads during recent years has been that insurance companies have had to meet heavier risks. Such risks have been further increased during the present year by a number of statutory provisions designed for the protection of persons injured on the roads. Section 33 of the Road and Rail Traffic Act, which came into operation on 1st January, 1934, increased the amount payable to hospitals for in-patients by authorised insurers from £25 (under s. 36 of the Road Traffic Act, 1930) to £50, and also added the reasonable expenses in respect of an out-patient to a maximum of £5. Under the Law Reform (Miscellaneous Provisions) Act, 1934, which came into operation on 25th July 1934, the death neither of the person in whose favour nor of the person against whom a cause of action lies, puts an end to the cause of action. Section 12 of the Road Traffic Act, 1934, is to come into operation on 1st January, 1935, and increases the liability of insurance companies by providing that certain classes of restrictions on third-party insurance should be invalid, e.g., restrictions with reference to the age, physical or mental condition of the drivers, the number of persons carried, the horse power or value of the vehicle, etc. Another section of that Act which is to come into force on 1st January, 1935, is s. 16, providing for a fee of 12s. 6d. (together with a mileage charge) in certain cases to doctors and hospitals in respect of emergency treatment. The tariff companies have at length decided after careful consideration to increase the premiums for private motor-cars in certain districts as regards policies renewed on and after 1st January, 1935. The increases are 20 per cent. on the current rates in the London postal area and Glasgow, and 10 per cent. increase in the London Metropolitan Police Area (exclusive of the London postal area) and the County of Lancashire south of the River Ribble. The great bulk of both private and commercial motor vehicles will not be subject to any increased charges, as it is hoped that some measure of success will attend the present efforts of the Ministry of Transport and others to reduce accidents. Notice is also given of a future general increase in the rates for motor-bicycles. It is estimated that a claim for £5,000 absorbs premiums covering the third party risks of 4,000 motor-cyclists for a year, and it is also pointed out that after 1st January, 1935, any policy condition excluding liability for accident during the carriage of a pillion passenger will be ineffective (s. 12 (*c*), Road Traffic Act, 1934). The rates for motor cycles are to be published in the near future. The increases, particularly of motor cycle premiums, have been inevitable for some time past, and there is some cause for satisfaction that they are to extend to only a small proportion of the goods-carrying traffic in the areas to which they apply.

Recent Decisions.

IN *Re South-East Lancashire Insurance Co. Ltd.* (reported at p. 859 of this issue) the Court of Appeal held that the £15,000 deposited by the company under the Assurance Companies Act, 1909, as amended by s. 42 of the Road Traffic Act, 1930, in connection with its motor-vehicle insurance business formed, on the winding-up of the company, part of the general assets available for all its creditors. A judgment of EVE, J., to the effect that it was available for all holders of motor-vehicle insurances, to the exclusion of creditors under other policies or generally, was reversed, while another contention—that the sum in question was subject to the prior claims of persons claiming under policies in respect of third-party risks—was negatived.

In *Flint* v. *Lovell* (reported at p. 860 of this issue), the Court of Appeal (GREER and SLESSER, L.JJ., ROCHE, L.J., dissenting) upheld a judgment of ACTON, J., who awarded a plaintiff in respect of personal injuries sustained in a motor car collision the sum of £4,400, which included the agreed amount of £400 special damage. The plaintiff was sixty-nine years of age at the time of the accident and £4,000 was awarded for the loss of "the prospect of an enjoyable, vigorous and happy old age." ROCHE, L.J., thought th damages were excessive and should be reduced by the Court of Appeal to £3,000.

In *Waring* v. *The London and Manchester Assurance Company Ltd.* (reported at p. 860 of this issue), CROSSMAN, J., rejected the contention that on projected sale by a mortgagee an equity of redemption is not shut out until conveyance and held that after a contract for sale a mortgagee could be restrained from completing only on the ground that the contract had not been entered into in good faith. A mortgagee's power to sell is a power to bind the mortgagor. If that were not so, his lordship said, every purchaser from a mortgagee would be getting a conditional contract, liable to be set aside by the mortgagor's coming in to redeem. There had, it was held, been no lack of good faith in the conduct of the sale in question and a motion for an injunction to restrain the sale was dismissed with costs.

Legal Reforms.

SUGGESTED "DEPARTMENT OF JUSTICE."

[CONTRIBUTED.]

THE demand for the removal of the Law Officers of the Crown from political party influences which is being widely advocated at the present time indicates a particular phase of the unrest prevailing in many disconnected directions with regard to legal administration generally. One set of people are advocating reform in one direction whilst other sets of people are doing the same in other directions. These various "sets of people," each of whom has a grievance against the law as it touches his own particular sphere, are becoming so numerous that there is a real danger lest, by combination, they may bring about results which will inflict irreparable injury upon our legal and judicial system. Whatever be the defects of that system (and the writer would be the first to admit the need for drastic reforms in many directions) it is yet fundamentally the soundest legal system in the world and the greatest safeguard against tyranny of any and every sort that might menace the freedom and well-being not of individuals only, but of every class and section of the nation. This danger will be intensified by ignoring complaints and protests. Every reasoned scheme of reform should be considered and dealt with on its merits; if faulty the faults should be made clear, and if there is any virtue in what is suggested the fact should be admitted, and if possible, an opportunity should be found for giving effect to it. The demand for Law Officers freed from the shackles of party is a demand which will be found to have many and influential supporters in both branches of the legal profession. It is, moreover, a proposition that is capable of being put into a very attractive form for the public generally; and it would only need another episode such as that of the *Campbell Case* in 1924 to set public opinion ablaze for reform.

A "PUBLIC DEFENDER."

The grounds upon which a change in the status and duties of the Law Officers is being advocated are worthy of note, as they proceed from several quite distinct quarters and arise out of entirely different causes of complaint. The popular demand for a "Public Defender"—originally put forward in a letter to *The Times* some years ago by the late General Bramwell Booth of the Salvation Army—is being revived, and a league has recently been formed for the express purpose of advocating it. The argument is that, as we have a Public Prosecutor, we ought to have also a Public Defender. Growing dissatisfaction on all hands with the operation of the Poor Persons' Rules (to which attention has been called on several occasions in THE SOLICITORS' JOURNAL) is becoming intermingled with the demand, though the distinction between "defence" which is suggestive of criminal procedure, and legal assistance in civil causes, is not very clearly understood. That, however, may not be of great moment, because the demand centres in the idea of a new "Department of Justice" in which the Law Officers shall figure prominently. Recent questions in Parliament as to the emoluments of the Law Officers and as to the cost of extra judges have served to draw attention to the fact that one Attorney-General is approximately the equivalent of three High Court judges in point of remuneration. This is the sort of thing that is apt to attract public attention; and it should not be lost sight of by law reformers. Emphasis is also being laid upon the extent of the legal patronage in the hands of the Attorney-General, and it is being openly said that no constituency can be properly represented by a member of the Bar whose professional interests have any dependence upon the favour of the Attorney-General with the Government Whips in the background. That is a deadly electioneering weapon.

PARLIAMENTARY ACTIVITIES OF THE LAW OFFICERS.

There is the further point that the Attorney-General in particular and the Solicitor-General to a slightly lesser degree are looked upon as responsible for the conduct of legislation in the House of Commons. They are the legal authorities charged with giving guidance both to the Government and to Parliament as to the effect of legal enactments and as to the proper interpretation of sections and clauses of Bills unintelligible to the lay mind. Asked by an interested M.P. recently as to how it would be possible to do without the Law Officers in Parliament, an advocate of reform promptly replied by asking whether the numerous eminent King's Counsel in the House and the great array of learned judges in the Lords were not capable of seeing that statutes were so worded as to be intelligible to the lay citizen? Another point raised in the same conversation had reference to the large amount of court work which fell upon the Law Officers. "How can they possibly attend to so many things? Are there not dozens of really able King's Counsel wandering about the Inns of Court with little or nothing to do at the present time to whom all this work could be transferred?" Such was the emphatic answer; and one must confess that it was an answer that may carry great weight in legal circles, should the subject—as is by no means unlikely in the near future—become one of burning moment. In fact the suggestion has been abroad for some time past; and the writer has heard it approved by more than one solicitor of eminence—to say nothing of what not-over-employed but necessarily silent K.C.'s may think about it.

COMPLAINTS OF INJUSTICE.

Most insistent of all, however, are the innumerable people who complain of injustice due to the costliness of litigation and their inability for that reason to secure any review of what they consider (in many cases have been professionally advised) was a miscarriage of justice in the court of first instance, whether it was the county court, a bench of magistrates or the High Court. These complaints must not, of course, be mixed up with the wailings of the grievance-monger—the man who has no real ground of complaint, but rails against the court, the judges, his own counsel and solicitor and everybody else. That type of dissatisfied litigant has always been with us and will continue to lift up his voice. But there are undoubtedly a large number of persons all over the country who have just cause for complaint—people who have suffered injustice and can obtain no remedy. Was it not Lord Hailsham who, when Attorney-General, referred to the need for a casualty clearing station (or some such expression—the writer forgets the exact words but can recall the incident) to which these people might go and have their complaint of injustice looked into? In the event of a Department of Justice being set up, that would presumably be one of its branches; and it might not be inappropriate to hand it over to the suggested "Public Defender" if such an official were, as is suggested, to be in charge of a branch of the "Department of Justice."

THE COST OF LITIGATION.

From the point of view of the legal profession—in both its branches—the most serious aspect of this entire subject is the decline in litigation due to excessive cost. The late Mr. Justice McCardie, whose experience at the Bar and on the Bench gave him exceptional opportunities of arriving at a sound conclusion on this matter, once said to the present writer that if only the "Annual Practice" could be reduced to more reasonable proportions and some definite limit could be placed to the costs of the smaller class of actions, whether in the High Court or the county court, so that litigants would know the limit of risk, there would be such an accession of work as would make everybody busy at once. One of the genuine grievances calling for remedy at the present time is the straight-cut distinction between a "poor person" (being a person who is not worth more than £50) and a person who, being able to afford to risk a minor action, is excluded from *all* assistance, but has no means of getting help to appeal

from an adverse judgment, however strong may be the reasons for appealing.

Presumably it would come within the province of the "Public Defender's" branch of the "Department of Justice" to make provision for meeting cases of that kind. It has been suggested that in an appropriate case there should be a *free* appeal on points of law. That is a suggestion worthy of consideration. The name "Public Defender," though it conveys a broad idea of such an official's status and duties, is not very accurate or satisfactory, but it will suffice for the time being. Probably he would take over (*a*) criminal defences for which ample provision has been made already by statute and rule; (*b*) the Poor Persons' procedure on the civil side which needs complete revision and amplification; and (*c*) the investigation of cases where injustice or denial of justice are alleged. There would, therefore, appear to be considerable scope for his activities; and it will be wise for both branches of the legal profession to have regard to the movement of public opinion on the whole subject.

Payment under Protest.

WHERE a plaintiff claims to be able to recover money previously paid by him to a defendant it is not unusual to find in the pages of a brief the confident contention that the plaintiff must succeed because the particular sum has been "paid under protest."

It is instructive to determine what legal significance this phrase may have.

It is well known that in certain circumstances money paid may be recovered back. To effect recovery in a proper case the law has displayed some of its flexibility. "This kind of equitable action to recover back money, which ought not in justice to be kept, is very beneficial, and therefore much encouraged": so Lord Mansfield, C.J., looked upon the matter in 1760 (*Moses* v. *Macfarlane*, 2 Burr. 1005, at p. 1012). In the same case, at p. 1012, the learned Chief Justice enumerated the occasions where an action for recovery would lie: "... for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition, express or implied; or extortion; or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. In one word the gist of this kind of action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."

But does the law find it necessary to "encourage" repayment of money paid "under protest" in the absence of circumstances which may be conveniently called compulsion?

It is submitted that the important question is not "protest or no protest," but "compulsion or no compulsion."

A payment which is voluntary is normally not recoverable. This is so where, for example, it is known at the time of payment to be in respect of an ill-founded claim, and the person paying declares that he does so without prejudice to his right to recover: *Brown* v. *M'Kinally* (1795), 1 Esp. 279, N.P. Further, it is, of course, well known that money paid under a mistake of law is normally irrecoverable. Where, for example, the tenant of a house subject to the Rent Restriction Acts overpaid his rent in circumstances when the overpayment demanded could not be recovered at law, the tenant failed to recover it back: *Sharp Brothers & Knight* v. *Champ* [1917] 1 K.B. 771. Lord Justice Scrutton there said that the payment was made under a perfectly legal contract, and though irrecoverable at law, neither party knew of this, and no pressure was put on the tenant to pay, and as the right to repayment did not come under any common law doctrine the sum could not be recovered, but it should be noted that in certain cases it has been said that the court has power to relieve against mistakes of law if there is any equitable ground which makes it, in the circumstances, inequitable that the money could be retained by the payee: *Rogers* v. *Ingham* (1876), 3 Ch.D. 351, per Mellish, L.J., at p. 357.

On the other hand, money paid under compulsion is normally recoverable, and decisions to this effect are legion.

The threat of penal action, an illegal arrest, duress of goods or documents, or payment made to avoid a seizure of goods afford simple examples. Lord Coleridge, in *Henderson* v. *Folkestone Waterworks Company*, 1 T.L.R. 329, laid down the principle in general terms. "No doubt when money paid under an error in law had been extorted or obtained by duress or any kind of compulsion it could be recovered back. ... The law once ascertained to have been against the party who had thus by compulsion obtained payment of the money, it can be recovered back ... The law, however, did not allow money voluntarily paid under a mistake in law to be recovered back."

Can it be said that payment "under protest" without the elements of compulsion has any legal effect which enables the party paying to recover it? It is clear that if an action is brought against a person who pays a claim under protest, purporting to reserve his right to raise the question in subsequent proceedings, he will fail to recover the payment in any such action: *Clydesdale Bank, Ltd.* v. *Schroder & Co.* [1913] 2 K.B. 1. Negative authority for the proposition that protest alone is ineffective is to be found in *Andrew* v. *Bridgeman* [1907] 1 K.B. 596. In that case a lessee paid a fine for the lessor's consent to assign a lease which contained a covenant making such consent necessary. The trial judge found as a fact that the payment was not established to have been under protest, and the Court of Appeal decided that the payment was not recoverable; the lessee's remedy was to disregard the covenant and assign without consent. It is illuminating to see how the protest point was dealt with. It was said for the appellant that payment was involuntary and made under pressure. Further, that it was unnecessary to prove that it was made under protest. Cozens-Hardy, M.R., in his judgment, said: "Nothing which I may say must be regarded as having any bearing upon the case where payment was made under protest. In such a case the money may, or may not, be recoverable." The other lords justices refrained from expressing an opinion. Is it not clear that, in a claim for repayment, though evidence that payment has been made under protest is relevant in determining whether there has been compulsion or not, such evidence alone is insufficient? This view is borne out by a dictum of Pickford, L.J. (as he then was), in *Maskell* v. *Horner* [1915] 3 K.B. 106, at p. 126. The learned lord justice there sums up the matter in a way which it is submitted is conclusive. "I do not think that the mere fact that a payment is made under protest is enough to entitle the payer to recover it back, but if it be shown that it was made under circumstances that show that the payer intends to resist the claim and yields to it merely for the purpose of relieving himself from the inconvenience of having his goods sold, the money can be recovered back, and the fact of a protest is some indication that it was so made."

Mr. Alexander Hayman Wilson, solicitor, of South Kensington, and of Victoria-street, left property of the gross value of £19,556, with net personalty £8,517. He left: To the National Portrait Gallery, a painting of his grandfather, Horace Hayman Wilson, Boden Professor of Sanskrit, by Chinnery, or a full-length portrait of his said grandfather by Sir George Hayter. To the Indian Institute at Oxford his replica by Chantrey of his bust of his grandfather, Horace Hayman Wilson, with the letter from Alan Cunningham relating to such replica. £1,000 to the trustees of his will to be applied by them for a memorial in the village of Tong, Staffs, where his father, the Rev. Charles Thomas Wilson, was vicar. £500 to the Westminster Hospital and £500 to the National Heart Hospital, London.

Costs.

HIGHER SCALE.

We are reminded of how little is known about the higher scale of costs under Appendix N by a passage between counsel and the learned judge in the case of *Hughes* v. *Union Cold Storage Co., Ltd.*, on the 19th July last. Mr. H. J. Wallington, K.C., counsel on behalf of the plaintiff, had asked for costs on the higher scale, and the learned judge, Mr. Justice Eve, had asked Mr. Vaisey, K.C., counsel for the defendants, for his observations thereon. Mr. Vaisey observed "Well, my lord, when my learned friend speaks of the higher scale, I apprehend that all he means is that the costs of three counsel shall be allowed on taxation." To this Mr. Justice Eve replied "That is one thing, and I think that the taxing master sometimes allows 6s. 8d. when he would ordinarily allow 3s. 4d., if the costs are on the higher scale, under the impression that he is carrying out the intention." His lordship then granted costs on the higher scale.

A reference to the higher scale of Appendix N will show that it means considerably more than just the allowance of three counsel. It means, in fact, that practically the whole of the items in the bill of costs will be doubled, and in some instances more than doubled. Thus, the item of instructions to sue or defend will be allowed at 13s. 4d. instead of 6s. 8d., the allowance for a writ of summons will be 13s. 4d. instead of 6s. 8d., instructions for statement of claim is £2 2s. instead of 13s. 4d., for defence, counter-claim or reply, 13s. 4d. instead of 6s. 8d., for preparing and issuing an ordinary summons 6s. 8d. instead of 3s., drawing a statement of claim £1 1s. instead of 10s., and so on.

It must be borne in mind, moreover, that the allowances set out in Appendix N are the irreducible minimum (see *Price* v. *Clinton* [1906] 2 Ch. 487), although the taxing master has unfettered discretion to increase still further any of the allowances by virtue of r. 27 (29) of Ord. 65, which provides that the taxing master shall allow all such costs, charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice, or for defending the rights of any party. It has been held, moreover, that he can increase even those items which are marked "not exceeding" or "not to exceed": see *McIver* v. *Tate Steamers* [1902] 2 K.B. 184, and *In re Ermen: Tatham* v. *Ermen* [1903] 2 Ch. 156. Thus, in the latter case, it was held that the taxing master had discretion to allow whatever fee he considered just and proper for the solicitor's attendance on the examination of a witness before an examiner, notwithstanding that Appendix N states that the fee for such an attendance is *not to exceed* two guineas. Again, in the former case, Appendix N states that the fee for instructions for an originating summons is *not to exceed* one guinea, but it was held that even this fee could be increased if the taxing master, having regard to all the circumstances, thought it just and proper to do so.

In point of fact, the position with regard to the allowance of costs on the higher scale is somewhat anomalous. Order 65, r. 8, provides that "solicitors shall be entitled to charge and be allowed the fees set forth in the column headed 'Lower scale' in Appendix N, in all causes and matters, and no higher fees shall be allowed in any case." Rule 9 provides that "the fees set forth in the column headed 'Higher scale' in Appendix N may be allowed, either generally in any cause or matter, or as to the costs of any particular application made or business done in any cause or matter if, on special grounds arising out of the nature and importance, or the difficulty or urgency of the case, the court or a judge shall, at the trial or hearing, or further consideration of the cause or matter, or at the hearing of any application therein, so order, or, if the taxing master, under directions given to him by the court or judge, shall think that such allowance ought to be made upon such special grounds."

A curious position is thus disclosed. On the one hand, there is r. 9, which provides that the higher scale of Appendix N shall apply only in such cases as the court or judge may direct, and r. 8, which specifically provides that solicitors shall be allowed costs under the lower scale and no higher fees shall be allowed in any case. On the other hand, we have r. 27 (29), which gives the taxing master unfettered discretion to allow whatever fees he shall deem just and reasonable, and this rule has been held to over-ride the specific provisions of r. 8: see *McIver* v. *Tate Steamers*, *supra*. It is possible, therefore, to conceive of an extreme case, somewhat improbable, it is admitted, but by no means impossible, where the taxing master, in the exercise of his discretion, might increase all of the allowances in the lower scale to such an extent that the higher scale was, in fact, being applied, notwithstanding that there was no specific direction of the court or judge as required by r. 9.

However, as stated, it is highly improbable that the taxing master could be induced to increase the whole of the items in a bill of costs to the higher scale level, and it is necessary, therefore, in a suitable case, to get an order from the judge that the costs shall be taxed on the higher scale. A point to bear in mind is the fact that the rule in *Price* v. *Clinton*, *supra*, would presumably apply so that the taxing master would be unable in the exercise of his discretion to reduce any item of the costs made out, by the direction of the judge, on the higher scale.

Exactly what constitutes a suitable case is a question of fact. There must, it will be observed, be special grounds. Broadly, the special grounds refer to peculiar difficulties in the conduct of the case, as where technical knowledge of a high order is required (see *Hopkinson* v. *St. James's* [1893] W.N.5), or where numerous foreign documents and judgments of foreign courts require to be considered (see *Fraser* v. *Brescia Tramways* (1887), 56 L.T. 771). Mere bulk in the documents used on the trial is not of itself a special ground, see *Amalgamated Properties, etc.* v. *Globe* [1916] W.N. 414, in which case, however, costs were granted on the higher scale, but mainly on account of the difficulties of presenting the defendants' case. In short, costs on the higher scale will be awarded only where the circumstances of the case necessitate the solicitor who conducts it possessing qualifications and ability far beyond those ordinarily required for the successful prosecution or defence of an action.

Company Law and Practice.

Capitalisation of Profits.

Though at the present time profits are not quite the rarity they were last year, they are still to seek in the case of many companies. But there are still some available here and there, and there are still cases where it is considered desirable by those who control the destiny of companies to capitalise those profits. Let us look at this operation for a few minutes from the point of view of the company lawyer.

Imagine that you receive instructions from a company to prepare the documents necessary to effect a capitalisation. What is the first thing to do? Look at the company's articles of association and see if it is empowered by its articles to capitalise undivided profits. In many cases you will find it is so empowered, in some cases you will find that the article which it has is not wide enough for the operation desired, and in quite a number of cases you will find that there is no power at all in the company; for this much is plain, that the company cannot do this unless it is empowered to do so by its constitution.

Now, Table A is silent on this point: some say that it is a defect, but others say that, in cases of this kind, it is desirable to be able to frame your own article *ad hoc*, when you know

exactly what is wanted. Maybe there is some force in this contention, but at least one standard form contains an article authorising the capitalisation of undivided profits which is perfectly adequate for the great majority of straightforward cases. There is this also to be said against there being any such power in Table A, that the exercise of that power usually results in the revenue going without a claim for sur-tax which it might otherwise have ; and, in the case of what one may call an official publication, there seems to be little object in suggesting to the subject a means of evading taxation.

I say " evading," but " avoiding " would be a better word, for attached to evasion there is usually some sinister significance of moral turpitude ; and it is clearly recognised by our courts that there is no lack of probity in the subject occasioned by some operation which takes him outside the scope of any taxing act ; taxing acts must be construed strictly against the Crown, and, if the subject can find a way of ordering his affairs without bringing himself within a taxing act, so much the better for him.

If the company's constitution enables it to do what it wants, you can go ahead ; if not, the articles of association must be altered to make the necessary provision. What is the next step ? See if there are available funds to make the capitalisation, e.g., reserve funds, or a credit balance to profit and loss account. If you have a reserve fund which appears to be adequate for the purpose, just look and see what the state of your profit and loss account is. If there is a substantial debit balance there, you must consider whether it is proper to capitalise the reserve fund. There may be cases where it is a proper thing to do to capitalise undivided profits of previous years without making up more recent losses, but as a general rule such an operation is not to be recommended. When considering this point, you may like to consider the much-debated decision in *Ammonia Soda Co.* v. *Chamberlain* [1918] 1 Ch. 266, which is rather the converse the point now raised.

It might be thought that that case encourages the hope that it is a proper thing to disregard subsequent losses in distributing profits of earlier years, but read the judgments in the Court of Appeal carefully, and in any case treat that case gingerly. Many persons competent to judge feel doubts as to the soundness of the principle which can be extracted therefrom, and some still entertain the hope that the highest tribunal available may one day come to a different conclusion. There could be objection to such a course on the ground which applies with such force to, for instance, conveyancing problems, namely, that a reversal of what has been believed for years to be the law may have unfortunate results—indeed, it is submitted that no harm could be done, and a salutary check might be imposed if there were such a reversal.

But it is not my object to-day to enlarge on this topic. Let us return to the capitalisation of profits. This practice has been a common one for years, but it is only since the war that it has really come into prominence in the struggle between the Crown and the tax-payer. In the good old days the questions which arose with regard to the operation arose as between tenant for life and remainderman—who was to get the benefit of the distribution—was it capital or income ?

This point the House of Lords decided in the great case of *Bouch* v. *Sproule*, 12 A.C. 385. That decision amounted to this, that the test to be applied is the test of the intention of the company. The company is entitled in domestic affairs to manage its finance as it pleases, and what it says is to be treated as capital is capital as against all the world. One cannot help wondering whether exactly the same result would have been reached in the first instance had the question arisen, not as between tenant for life and remainderman, but as between the Revenue and the tax-payer.

The decision in *Bouch* v. *Sproule* did not at first attain the importance which has subsequently attached to it, because super-tax and sur-tax were, in the far-off days when it was decided, still unborn. The importance now arises in this way, that, whereas the profits of the company are chargeable with income tax, which is paid by the company, the company is not ordinarily assessable to sur-tax. I say " not ordinarily assessable to sur-tax " because there is now available a statutory provision which, in certain circumstances, enables sur-tax assessments to be made on companies of a certain circumscribed kind, but I don't intend to deal with that to-day.

Sur-tax being, as I have said, not assessable on a company, but being a tax on individuals, any distribution of profits may become, in the hands of the individual, liable to sur-tax. It may so become, and will be, if it be distributed as income ; hence the great object of the capitalisation of profits is to distribute the profits as capital so as not to render them liable to sur-tax if they go to persons above the statutory limit of income. *Bouch* v. *Sproule* provides a ready means of achieving this end ; and, though the Revenue have challenged such distributions and claimed that they render the recipients liable to sur-tax, this claim has been defeated in three cases to which I would refer briefly.

The first is *Commissioners of Inland Revenue* v. *Blott* [1921] 2 A.C. 171 (with which may be coupled the case of the same gentlemen against Greenwood, reported in the same place), the next *Commissioners of Inland Revenue* v. *Fisher's Exors.* [1926] A.C. 395, and the last *Commissioners of Inland Revenue* v. *Whitmore*, reported in 10 T.C. 645. In *Blott's Case* and *Greenwood's Case* shares were allotted as fully paid up in satisfaction of a bonus, and in neither case were the shareholders given any option to take up the bonus in cash. The Revenue claimed that those shares were income in the hands of the recipients, and that those recipients should be assessed to super-tax in respect of the shares, but that claim was rejected by Rowlatt, J., by the Court of Appeal, and by a majority of the House of Lords ; the decision in *Bouch* v. *Sproule* being followed. In *Fisher's Case* the bonus was satisfied, not by the issue of shares credited as fully paid up, but by the issue of debentures, and the Revenue contended that there was a distinction between this case and *Blott's Case*, in that the debentures did not represent an increase in the shareholder's capital, but a new and independent right, i.e., a debenture.

But *Whitmore's Case*, which did not go beyond the court of first instance, goes a good deal beyond what was decided in *Fisher's Case* in point of fact, though the principle is the same. In *Whitmore's Case* a bonus was satisfied by the issue of debentures which were redeemable on one month's notice by either the company or the debenture-holder, and in fact they were redeemed rather less than one month after issue by agreement between the company and the debenture-holder. Here, therefore, was a case where it might almost be said that the bonus was distributed in cash, but Rowlatt, J., held that the debentures did not attract super-tax.

It is not easy at first sight to see why a payment in cash should be objectionable, and should bring the distributed funds in for sur-tax purposes ; logically, there seems no reason, and I do not know that there is any direct authority to that effect, though I think it appears from Lord Hanworth's judgment in *Fisher's Case* that he thought so. But if the principle of *Bouch* v. *Sproule* is applied in its integrity it seems quite immaterial as to what form the distribution takes, cash, shares, debentures or anything else ; be that as it may, no one seems to have had the hardihood to try a bonus distribution for cash and get it tested in the courts.

It may, I think, not be without its uses to look at some of the more pertinent observations made in the course of the decisions I have referred to above. Read what Lord Haldane said in *Blott's Case*, at p. 184 : " My lords . . . I think that it is, as a matter of principle, within the power of an ordinary joint stock company with articles such as those in the case before us to determine conclusively against the whole world whether it will withhold profits it has accumulated from

distribution to its shareholders as income, and as an alternative not distribute them at all, but apply them in paying up the capital sums which shareholders electing to take up unissued shares would otherwise have to contribute. If this is done the money so applied is capital and never becomes profits in the hands of the shareholder at all."

Lord Sumner, in *Fisher's Case*, at p. 407, says this : " Shortly stated, I understand that *Blott's Case* was decided on this principle. To attract super-tax to a bonus distributed to him by a company in which he is a shareholder, what reaches the taxpayer must at that moment bear the character of income, impressed upon it by the company which distributes it and by it alone. Provided that the company violates no statute and also keeps within its articles, it can call the subject-matter of the distribution what it likes, and, I think, this involves the corollary that it can either call it by a new name or simply discard its old one. After all, it is natural for the creature to be named by its creator. Further, what the company says it is, that it is as against all the world. What the company says it shall no longer be, that it is no longer for any purpose."

A Conveyancer's Diary.

Mortgagor's Right to Redeem—Effect of Contract for Sale by Mortgagee.

A RECENT case has raised a point which, so far as I can find, has never even been argued in court before, and most of us thought was unarguable. For that reason alone it is interesting, although the result seemed to be a foregone conclusion. However, the case occupied the attention of the court for the better part of two days, and leave to appeal from the decision was given.

In *Waring* v. *The London and Manchester Assurance Co. Ltd. and Others* (78 SOL. J. 860), the facts were that the plaintiff was the owner of leasehold property which was mortgaged to the defendant company. The plaintiff being in default, a receiver was appointed, and ultimately the defendant company in exercise of their statutory power of sale contracted to sell the property to Littman, who was also made a defendant in the action. After the contract for sale the plaintiff applied to the defendant company to produce the documents of title to another insurance company, who, he said, were willing to advance sufficient to pay off the mortgage of the defendant company. That request was refused on the ground that the property had already been sold. The plaintiff thereupon started an action for redemption and the matter came before the court on a motion for an interlocutory injunction to restrain the defendant company from completing the sale by conveyance to Littman.

It appears that it was, in the first place, contended that the sale to Littman was at an under-value, and for that reason the court would interfere. There does not seem to have been any evidence offered in support of that, and the point seems to have been dropped. At any rate, counsel for the plaintiff did not rely on it in his argument.

Before leaving that point, however, it may be as well to notice what the plaintiff would have had to prove to succeed on that ground.

Shortly, it may be said that a mortgagee selling under his power of sale must obtain the best price that he reasonably can, and that the court will not set aside a contract on the ground of under-value unless the under-value is so great as to be in itself evidence of fraud.

In *Warner* v. *Jacob* (1882), 20 Ch. D. 191, the circumstances were somewhat similar to those in the *Waring Case*.

By a mortgage dated 5th June, 1879, one Warner, in consideration of £3,500 advanced to him, mortgaged certain hereditaments in Clerkenwell (to which he was entitled under a building agreement) to Jacob and Sherriff, the trustees of the Royal Benefit Building Society, by way of security for the payment of all moneys due from Warner according to the regulations of the building society. The deed contained a power of sale in the usual form. Warner found difficulties in obtaining a lease under his building agreement, and became in arrear with his payments to the building society, who, on the 28th of May, 1880, took possession. On the 23rd of October the trustees of the building society gave notice to Warner that they intended to sell, and on the 8th of November they contracted to sell to T. L. Boyd for £5,500. On the 19th of January, 1881, Warner brought this action against the trustees of the building society and against Boyd, the purchaser, alleging that he, Warner, was only temporarily in difficulties, and could have borrowed money to pay off the society ; that he hoped to obtain a lease which would increase the value of the property, and that the sale was at an undervalue and made for the purpose of embarrassing him ; and that the agreement with Boyd was not binding, and claiming redemption and damages. The trustees of the society denied that the sale was at an under-value or made for any purpose except that of realising ; and Boyd denied all knowledge of anything else. The plaintiff contended amongst other things that the mortgagees were trustees for the purposes of the power of sale. Kay, J., held on the evidence that the sale was not in fact at an under-value, and in the course of his judgment, after stating the facts and referring to the arguments advanced for the plaintiff, and reviewing the authorities on the subject, said : " The result seems to be that a mortgagee is strictly speaking not a trustee of the power of sale. It is a power given to him for his own benefit, to enable him the better to realise his debt. If he exercises it *bonâ fide* for that purpose, without corruption or collusion with the purchaser, the court will not interfere even though the sale be very disadvantageous, unless indeed the price is so low as in itself to be evidence of fraud."

In the instant case, counsel for the plaintiff contended that a mere contract for sale by a mortgagee did not put an end to the mortgagor's right of redemption, and that at any time before conveyance (which it was admitted would be a bar) the mortgagor might redeem ; the contract was expressed to be entered into by the mortgagees as such, and the purchaser must be deemed to be subject to the risk of the mortgagor's coming in to redeem before completion. Reliance was placed upon s. 104 of the L.P.A., 1925, which, it was said, contained nothing which had the effect of shutting out the equity of redemption until completion.

Before dealing with s. 104 it will be best to look at s. 101 (1) (i), which, as will be seen, is referred to in his lordship's judgment. That sub-section confers upon a mortgagee :—

> " (i) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property or any part thereof, either subject to prior charges or not, and either together or in lots by public auction or by private contract . . . with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract and to re-sell, without being answerable for any loss occasioned thereby."

It will be seen, therefore, that a mortgagee may sell by private contract. It follows that a contract is a sale within the meaning of that section. I do not see how that conclusion can be avoided.

Now turn to s. 104 (1), which reads :—

> " A mortgagee exercising the power of sale conferred by this Act shall have power by deed to convey the property sold, for such estate and interest therein as he is by this Act authorised to sell or convey or may be the subject of the mortgage freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage."

Note the expression " property sold," inferring that the sale has taken place before the conveyance.

This sub-section would hardly be necessary if it were not that the Act empowers a mortgagee to convey estates which he does not hold. Thus he can convey the freehold or leasehold reversion expectant upon the mortgage term. The conveyance is, in any case, merely machinery for carrying into effect a sale already made.

In dismissing the motion Crossman, J., said: "The contract was in no way conditional and was expressed to be made by the assurance company as mortgagees. It seems to me that, after the contract for sale, the mortgagee could be restrained from completing only on the ground that the contract had not been entered into in good faith. In my judgment s. 101 of the L.P.A., 1925, is perfectly clear, and means that a mortgagee has power to sell by private contract or public auction and to complete by conveyance. The power to sell is a power to bind the mortgagor. If that were not so every purchaser from a mortgagee would be getting a conditional contract liable to be set aside by the mortgagor's coming in to redeem. Such a thing would make it impossible for a mortgagee to sell." His lordship proceeded to deal with the question of under-value and said that he found that it was impossible, on the facts, to suggest any lack of *bona fides* on the part of the mortgagee.

I understand that leave to appeal was given, but do not suppose that we shall hear any more of this case. In fact, the contention was a hopeless one, and it is not surprising that there should be no record of any previous attempt to induce the court to hold that a mortgagor's right to redeem remained after the mortgagee had contracted to sell the mortgaged property and the contract had been entered into in good faith.

Landlord and Tenant Notebook.

L.T.A., 1927, Pt. I; Goodwill Accrued during New Lease.

While it is too early to look for any decisions interpreting the enactment, prudent solicitors concerned with questions of new leases arising out of L.T.A., 1927, Pt. I, will not have failed to have noticed the provisions of s. 5 (8): "No claim for a new lease under this section shall arise in respect of goodwill attaching to the premises and attributable to the trade or business carried on thereat during the term of a new lease granted in pursuance of this section, or of a renewal of a lease granted in lieu of compensation under the last foregoing section . . ." and the sub-section concludes with a declaration that it is not intended to interfere with the right to monetary compensation for goodwill in such circumstances.

The idea is obvious; a landlord is not to go on being compelled to grant new leases against his will. But there are degrees of compulsion and of unwillingness. Of course, the sub-section makes it quite clear that if a new lease is ordered by the tribunal the process cannot be repeated. The new lease would obviously be "granted in pursuance of this section," s. 5. Likewise, if a tenant "makes a claim" for monetary compensation in "the prescribed manner" indicated by s. 4 (1), receives an offer from the landlord citing proviso (ii) to that sub-section, and at once accepts it, he has clearly brought himself within the scope of s. 5 (8). But what may prove a source of difficulty may be expressed as follows: Parliament has given the tenant a weapon but directed that he shall use it once only. But suppose he achieves his object by sabre-rattling, or even that mere knowledge of the availability of the weapon deters the landlord from resisting? Has the tenant then "used" it?

A study of this problem involves an examination of the two sections, 4 and 5. The former creates the right to monetary compensation. At the very outset, the making of a claim in the prescribed manner is made a condition of the right. This is of great importance. Sub-section (1) cannot be said to be dealing with procedure merely. The making of the claim in the prescribed manner is just as much a condition precedent as is the existence of attached goodwill.

The words "renewal of a lease granted in lieu of compensation under the last foregoing section," in s. 5 (8) can, therefore, apply only if a claim has been made in the prescribed manner. The manner in question involves a written notice describing premises, business and demanding a specified sum of money. It seems, then, that if a landlord were to grant a renewal because he feared that if he did not the tenant would invoke the Act, or because the tenant said that he would make a claim, or because the tenant hinted (and hints vary in breadth) that he might make a claim, the landlord might be called upon to make a third grant when the time came.

This may penalise landlords of various kinds, including those who do not wait for claims because no Act of Parliament was necessary to make them realise and respond to the justice of the tenant's request, those of peaceable disposition, those too wealthy to be bothered about exploiting added goodwill. It may be assumed that the just and peaceable varieties will not want to seek the protection of s. 5 (8) and will not consider it desirable that their successors should so shelter themselves; but this does not apply to the opulent class, who, if not apprehensive of a change in their own circumstances, should pay some consideration to the possible needs of their possible successors in title.

Passing on to the main provisions of s. 5 ("this section"), and proceeding on the assumption that there is no sinister significance in the fact that sub-s. (5) uses "under" in the one case, but "in pursuance of" in the other; here the tenant opens fire with a "notice" requiring the grant of a new lease: sub-s. (1). The notice does not have to follow any prescribed form, and the part of the original r. 2 of the County Court (Landlord and Tenant) Rules, 1928, which purported to prescribe a form was held, in *Gough's Garages Ltd.* v. *Pugsley* [1930] 1 K.B. 615, to be *ultra vires*, and has since been deleted. However, some sort of notice must be served, and this must be done within a month of receiving notice to quit (periodic tenancies) or not more than thirty-six months and not less than twelve months before the term expires (fixed terms). The next sub-section deals with the application to the tribunal, and does so—it is important for present purposes to note—without mentioning the possibility of such proceedings being unnecessary, thanks to the parties having agreed. The third sub-section specifies conditions precedent to the grant and conditions under which it must be refused. Others deal with a variety of matters, such as a right to have an option to determine by six months' notice in the event of the premises being required for certain purposes (sub-s. (5)), a right to a covenant restricting user to the same business (sub-s. (12)), etc.

Now, to take an extreme hypothetical case as an illustration of what may happen; suppose a tenant, fifteen months before his lease ends, suggests a fourteen years' renewal to the landlord. That the landlord is willing, asks a slightly higher rent because of improved transport conditions but not on account of added attached goodwill which both parties know to exist, bargains for an option to determine at seven years in the event of half-formed plans for reconstruction maturing, stipulates no other business shall be carried on while the term lasts, and that agreement is reached on these lines. That the option is never exercised, and that when the new term has run twelve and three-quarter years, the tenant (or his successor in title) asks the landlord (or his) for a renewal and bases his request on L.T.A., 1927, s. 5. Is the right barred by sub-s. (8)? I think not; for while when the present lease was granted, both parties unconsciously followed the same line of thought as the Act, it cannot be said that the lease was a new lease granted in pursuance of the section.

The moral is that any practitioner concerned on behalf of a landlord with negotiating a new lease of business premises which might be offered as an alternative to compensation for

goodwill or be obtained *in invitum* because the compensation would be inadequate, would do well to consider the desirability of insisting on a claim or notice. It is, of course, also most advisable that the new lease should recite the circumstances; or, if recitals are considered old-fashioned, describe itself as granted under s. 4, or granted in pursuance of s. 5, of L.T.A., 1927.

Our County Court Letter.

THE RELEVANCE OF MEDICAL EXAMINATIONS.

In *Silcock* v. *James Pearson & Sons*, recently heard in the Liverpool Court of Passage, the claim was for damages for negligence, whereby the plaintiff had suffered an injury to his knee on a journey to London in 1932. The door of the driver's cabin in a motor coach (in which the plaintiff was a passenger) had flown open, and the emergency door had struck the plaintiff, who developed synovitis. The defence was that (while a kind of accident had happened) none of the twenty-six passengers complained of injury, and there was a doubt whether the plaintiff's injuries were incurred in any accident with which the defendants were concerned. The presiding judge (Sir W. F. K. Taylor, K.C.) held that the plaintiff had made out his case, but his previous advisers (not his present solicitor) had not agreed to a medical examination, thereby prejudicing the defence. Judgment was given for the plaintiff for £77 6s., but only with half costs.

VALIDITY OF CATTLE WARRANTIES.

In *Salt* v. *Bathew*, recently heard at Uttoxeter County Court, the claim was for £20 13s. 6d. as damages for breach of warranty on the sale of a calver. The plaintiff's case was that (1) the cow had calved the day before the sale, and had walked nearly two miles to market, where the plaintiff had remarked that she had been moved rather soon; (2) the defendant then said: "You can take her on my word. I have never had a bad cow in my life," but next day the cow had pneumonia, from which she died. The defendant's case was that he had not given the alleged warranty, as the only warranty he gave was that the cow was "right and straight in her bag and had calved and cleansed straight and cleanly." His Honour Judge Ruegg, K.C., observed that the defendant had behaved honestly, without fraud or pretence, but he had run a risk in taking the cow to market so soon after calving. Although the symptoms were not visible at the sale, the cow had pneumonia, and judgment was therefore given for the plaintiff, with costs.

ILLEGAL SUSPENSION OF MINERS.

In a recent case at Barnsley County Court four miners claimed £2 6s. from the New Monckton Colliery Limited as arrears of wages. The plaintiffs' case was that, having refused to sort coal below ground (instead of on the pit top) they had been suspended for a day—in breach of their contract of service. The defence was that the plaintiffs had filled excessive dirt with the coal, and there was a custom to suspend men guilty of the practice. His Honour Judge Frankland observed that, whatever the practice might be, there was no such custom in law. It was pointed out (on the defendants' behalf) that the plaintiffs had made a rod for their own backs, as there would be no alternative in future but to dismiss men—instead of temporarily suspending them—for filling dirty coal. It was explained for the plaintiffs that the allegation of dirty coal had taken them by surprise, as no complaints had been made. Judgment was given for the plaintiffs, with costs.

OPEN TRAPDOORS IN SHOPS.

The rule in *Indermaur* v. *Dames* (1866), L.R. 1, C.P. 274, was applied in a recent case at Liverpool County Court, viz., *Turner* v. *Burke*. The plaintiff (aged sixty-two) claimed damages for negligence, whereby he had sustained three broken ribs, through falling through a trapdoor in the shop of the defendant, who had given no warning of the danger. The defence was that (1) an assistant had shouted "Mind the trap," but the plaintiff was stone deaf; (2) the defendant was entitled to assume that the plaintiff was a normal customer, in which event the warning would have been adequate. His Honour Judge Procter held that the trapdoor constituted a trap, against which a reasonable person should have guarded his customers. Judgment was therefore given for the plaintiff for £68 and costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

AWARD FOR INJURY TO EYE.

In *Bateman* v. *Stephen*, at Gloucester County Court, the applicant's case was that (1) on the 19th October, 1933, while loading sacks of wheat during milling, he strained himself and had damaged the retina of his eye; (2) he was totally incapacitated from the 28th October until the 13th December, and partially incapacitated until March, 1934; (3) after denying liability, the respondent (on the 6th June) had filed a consent to a declaration of liability, and had paid into court £20 7s. 8d. in satisfaction of compensation. His Honour Judge Kennedy, K.C., recorded the declaration of liability and ordered payment out of the above sum—medical expenses being taxed at five guineas.

TOTAL INCAPACITY FROM HERNIA.

In *Marsden* v. *Rodwell*, at Ashby-de-la-Zouch County Court, an award was claimed against the liquidator of Checkland & Co. Ltd. The applicant's case was that (1) in 1913 and 1923, while working in the Coleorton Colliery, he had had accidents, and had received 35s. a week compensation, but this had now ceased; (2) his age was sixty-two, and (since leaving hospital in 1932) he had had to remain in bed as the result of treatment for hernia; (3) his medical evidence was that (on the 9th June, 1934) he was worse than in 1932, being now totally incapacitated. The respondent's case was that the applicant had recovered from hernia, as the medical evidence was that his condition was due to premature old age, viz., in March, 1933, from which date the liability for compensation ceased. His Honour Judge Longson made an award of £1 a week, with costs on Scale B.

CEREBRO-SPINAL MENINGITIS NOT AN ACCIDENT.

In *Timson* v. *Bestwood Colliery Co. Ltd.*, at Nottingham County Court, the evidence was that on the 6th August, 1933, the applicant had bumped his head (while ascending some steps) and had been admitted to hospital, with spotted fever, a few days later. His medical evidence was that, although the blow had not caused the disease, it had prevented him from making a more rapid recovery, as the blow (having weakened the membranes of the brain) had aggravated the disease. The respondents' medical evidence was that the blow had nothing to do with the disease, which had been neither caused nor aggravated as suggested. His Honour Judge Hildyard, K.C., was not satisfied that the incapacity was due to any accident, and judgment was therefore given for the respondents.

THE DEPENDENCY OF GRANDCHILDREN.

In *Jones* v. *Dowlais Collieries Limited*, at Merthyr Tydfil County Court, the applicant's case was that (1) she and her late husband (who had been killed in the employment of the respondents) had practically adopted their daughter's child, almost from birth; (2) although the child would have been supported (without assistance from the grandparents) if the applicant's son-in-law had been in employment, he was out of work; (3) the grandchild was therefore a dependant of the

deceased. The respondents denied that there was any dependency, through the relationship of the child, as the widow was the only dependant. This contention was upheld by His Honour Deputy Judge W. C. Howe, and judgment was therefore given for the respondents.

Land and Estate Topics.

By J. A. MORAN.

THE advent of the Christmas holiday is having very little effect on the market for real property. Small investments are very much in evidence, and there are plenty of competitors. There is no doubt that real estate is coming into its own ; and even people with small available capital are turning to it not only as a source of annual revenue, but because of its strength as a tried security. One hears a lot of the trials of property owners, but these only come to light when the purchaser is foolish enough, when the price is cheap, to take over possession of a house that is as likely as not to be scheduled within a slum area. The possession itself may be quite habitable, but the neglect and indifference of those who control the immediate neighbourhood may lead to disastrous results.

The intention of one leading property company to " create investments " by embarking on building schemes instead of making new purchases is significant. There has been, undoubtedly, a lot of buying, of late, for purely investment purposes ; and while the ordinary citizen may be satisfied with his venture, it is not surprising that the directors of a public company want a little more scope for their enterprise. With aptitude and vision, they may work wonders in what appears, to the public eye, as a derelict area. There are still districts within easy reach of the Metropolis that are in need of good medium-class residences.

While the individual is looking out for something suitable for investment there is much enterprise among local authorities. The Blackpool Corporation, for instance, has decided to acquire, for £175,000, an area of 461 acres from Mr. H. Talbot Clifton, the squire of Lytham. The land is on the southern boundary of the borough and includes the well-known Squires Gate racecourse and aerodrome in the Borough of Lytham St. Annes. The deal opens up various possibilities for the near future. Another big land deal—this time foreshadowed—is the decision of the Broadstairs Urban District Council to purchase, for £60,000, the North Foreland estate of the late Lord Northcliffe, subject to the consent of the Minister of Health. The estate includes the well-known golf course—not likely to be interfered with—and " Elmwood," the home of the late Peer.

The new Chairman of the London Auction Mart, in succession to the late Mr. Seagram Richardson, is Mr. Charles Osenton, P.P.A.I. Another past President of the Auctioneers Institute, Mr. C. Rowland Field, is the new Vice-Chairman ; and Mr. Wallace Withers, an old friend and partner of the late Mr. Richardson, has joined the board of directors.

A lion was stated to be the only asset of a man who was summoned at Liverpool Police Court for arrears of rates. " Well, distrain on the lion," the magistrate told the collector.

If a lion, why not, when the opportunity comes round, an elephant, a tiger, or a rattlesnake ? The difficulty about seizing goods of this nature is that, while they are incapable of realising that they represent arrears, they are the first in the world to resent any interference from an outsider. And if it should come to a bout between the humble servant of the local authority and a full-blooded rattlesnake, it would be a crawl over for the reptile.

The Governors of the College of Estate Management offer a Travelling Scholarship to the value of £300, tenable for one year, for the purpose of studying agricultural methods in this country or abroad. It is open to British-born graduates of a British University or those holding such qualification as may be approved by the Board of Governors of the College. All applicants must be under thirty years of age on the first day of next month.

Culford Hall, the Suffolk seat until lately of Earl Cadogan, may be had, with 394 acres, for £22,500. There is nothing very remarkable in this as, owing to heavy taxation and cost of upkeep, it is difficult to find anyone who will accept the responsibilities bound up with the maintenance of a vast and luxurious mansion. Near London it might prove to be a gold mine to the speculator ; but situate where it is, it might have to wait a long time before it was acquired for personal occupation. But whatever are the drawbacks, the Hall and the land are worth the price mentioned.

" First-rate pheasant and rough shooting, including red deer and roe deer," is included in the particulars of sale of an estate between Windermere and Esthwaite Water, that is for sale. This is most unusual and affords a striking illustration of the way Lakeland deer have increased of late.

Obituary.

MR. H. W. SIMPKINSON.

Mr. Henry Walrond Simpkinson, C.B., Barrister-at-Law, sometime Assistant Secretary of the Board of Education, died at Kensington on Saturday, 24th November, at the age of eighty-one. He was educated at Marlborough and St. John's College, Cambridge, and was called to the Bar by Lincoln's Inn in 1879. He entered the Education Office in 1883, and from 1903 to 1911 he was Assistant Secretary of the Board. He was made a C.B. in 1911.

MR. W. L. COX.

Mr. William Lynch Cox, retired solicitor, of Swansea, died at St. James Place, S.W., on Friday, 23rd November, at the age of eighty-five. Mr. Cox was admitted a solicitor in 1873, and retired from practice about eight years ago.

MR. A. KENNETTE.

Mr. Apsley Kennette, J.P., solicitor, of Rochester, died on Sunday, 25th November, at the age of eight-three. Mr. Kennette, who was admitted a solicitor in 1880, had been Town Clerk of Rochester for thirty years. He was made a Freeman of the city in 1927.

MR. A. B. MARSH.

Mr. Alban Bower Marsh, retired solicitor, of Croydon, died at a nursing home on Thursday, 22nd November, at the age of seventy-three. Mr. Marsh was admitted a solicitor in 1890.

CORONER'S JURIES.

An interesting statement was made recently at the close of an inquest on the body of a cyclist who was killed. The jury returned a verdict of accidental death, the driver being exonerated. The solicitor representing the latter addressed the coroner as follows :—" I should like to take the opportunity of protesting very strongly against the patriarchal character of the jury, whose average age is eighty or seventy-five, and who are totally unfitted to inquire into a motor accident case. I also wish to protest against the highly undesirable practice of this court in having the same men here time after time, so much so, that in my own experience, I have come to look upon the foreman as an old friend." The coroner said that all the names were on the jury list. While it does not appear that age itself should be regarded as a bar to the efficient discharge of a juryman's duty, the practice alluded to cannot be commended particularly in view of the fact that in cases of death by being run down there is some possibility of blame being attached to an innocent person.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Liability for Damage to Motor Van.

Q. 3078. A is an infant employed by B as a motor van driver. On occasions B has allowed A to use his motor van for his personal use in his private time. C, who is the brother of A, asked A to move some furniture for him, and A, after obtaining permission of his employer B to use the van, agreed to move the furniture, and a price was agreed between A and C. There was, of course, no agreement between A and B for payment for the use of the van. In the course of moving the furniture the engine of the van became damaged and it became necessary for C to engage another van to complete the journey with the furniture, and it also became necessary to arrange to have the van of B towed to the nearest garage. B now calls upon A, or alternatively C, to pay for the damage to the van, including a charge for loss of use. It will be argued that, owing to the condition of the van, that the damage to the engine would have occurred in any event the next day whilst it was being used on the daily round, had the van not been used on this specific occasion.

(1) Is the latter contention right in law, assuming expert evidence can be called on the point ?

(2) Has B any right of action against C ? It would seem for the purpose of the removal that A was neither the servant or agent of C, as A was really fulfilling a contract made with his brother C.

(3) Assuming A was negligent in the management of the van, has B any legal claim against him, bearing in mind for the purpose of any contract which may exist between A and B that A is an infant and the servant of B ?

A. (1) B's claim for damage to the van, including a charge for loss of use, can only be sustained on proof of negligence by A, in which case B's claim would be recoverable as damages for negligence. A's defence will be that the damage was not due to negligence, but to the state or condition of the van when borrowed. Assuming expert evidence can be called, A's contention is right in law, and the first question is therefore answered in the affirmative.

(2) B has no right of action against C, as there was no contract between the two, and C owed no duty to B, and cannot therefore be sued in tort. A was an independent contractor as regards C, and was not the latter's servant or agent.

(3) Assuming, however, that A was in fact negligent, in the management of the van, he would then be liable to B as a gratuitous bailee. The relationship of master and servant did not exist between B and A, as regards the loan of the van, and A is liable in tort—even though an infant.

Interference with Light.

Q. 3079. Our client, A, owns and resides in a house situate in a rural district, and the district council is the local authority for the purposes of the Town and Country Planning Act, 1932. A's property adjoins a house and land belonging to B, and the only window lighting a ground floor room of A's house fronts the boundary line between the two properties and is only 4½ feet away from it. In April of this year B got the plan of a cart shed approved by the district council's surveyor and also by the surveyor of the town planning committee, who operate the Act. The rear wall of this cart shed, which is nearly 7 feet high, is built along the boundary line opposite to A's said window and completely blocks the view therefrom, and partly diminishes the flow of light thereto. A had no legal right to prevent the erection of the wall, but owing to his expostulations it was not built to the height of 8 feet shown on the plan. It is admitted that the district council's surveyor was obliged to approve the plan. A complains that the first intimation he received of the proposed erection was the commencement of the work. The Town and Country Planning (General Interim Development) Order, 1933, then in force, provides that, where application is made to the authority for leave to "develop" land, the authority shall, before arriving at their decision on the application, give full consideration (*inter alia*) to representations received by them from any persons whose interests would be affected by the proposed development. In this case, the amenities of A's house were bound to be affected injuriously by the erection of the proposed building, but he was not given an opportunity to make representations, and the plan was approved on behalf of both authorities without his knowledge. The blocking of the view from a window in the manner stated provides, it is submitted, one of the "developments" contemplated by the Act which the authority carrying out the provisions of the Act is entitled to prohibit, whatever may be the respective legal rights of the property owners concerned. So far as A has been able to ascertain, the town planning committee's surveyor approved the plan without visiting the premises; otherwise, it is inconceivable that he would not have appreciated the mischief likely to be caused by the proposed erection, and at least have given A the opportunity of making "representations." The district council say that they can do nothing, and so A desires that the Minister of Health shall hold an enquiry into the whole matter, and particularly with regard to the circumstances in which the erection of the building, which interferes so greatly with the amenities of his house, was permitted; for it seems to be one of those things that the Act was passed to prevent. We shall be much obliged if you will let us have your opinion as to the possibility of getting an official enquiry held, and as to how the Minister of Health should be approached, e.g., by a formal petition or by a letter detailing the facts.

A. A letter should be written to the Minister, pointing out that A has been hardly used, and—by reason of non-compliance with the prescribed procedure—A is in a position to apply for a *certiorari*. It should be submitted, however, that with a view to avoiding expense, the matter can be adequately dealt with if the Minister will hold an enquiry into the circumstances. It is doubtful whether a formal enquiry will be ordered, but—as the approval of the plan was apparently *ultra vires*—some method may be found of remedying the position, without an application to the court to quash the order of the local authority for the erection of the cart shed.

Rent Restrictions Acts—Purchase by Tenant of Freehold.

Q. 3080. A is a statutory tenant of B. He purchases the house from B. Later A sells the house to C, but does not give up possession, the arrangement being that A shall remain as C's tenant at a rent equivalent to the normal controlled rent. Subsequently C wishes to increase the rent by several shillings per week. The statutory tenancy of A was presumably terminated when he becomes the owner and apparently as between A and C the house is decontrolled, even though not

registered as such under the 1933 Act, and notwithstanding that A has been continuously in possession. Is C perfectly in order in contending that the house is decontrolled and acting accordingly ?

A. The word " landlord " is not used in a technical sense in s. 2 (1) of the Act of 1923, and if an owner, the freeholder, is in possession at or at any time after the passing of the Act, the house is decontrolled for all purposes (*Goudge* v. *Broughton*, reported with *Lloyd* v. *Cook* and other cases [1929] 1 K.B. 103, C.A.). The opinion is given that A became a contractual tenant of C of a decontrolled house, and (subject to what is stated below) the tenancy can be determined in accordance with the express or implied contract, unless A can show it was part of the bargain that he should have the right of a statutory tenant so long as the statutes remained in force as to houses of that class. If, as is possibly implied from the reference to the 1933 Act, the rateable value did not exceed £13 on 1st April, 1931, the house would again be brought under control if the letting by C to A preceded 18th July, 1933, and C did not register. If the sale by A to C and contemporary letting by C to A was on or after that date, A is not protected.

Retired Partner as Deferred Creditor.

Q. 3081. A, partner in the firm of A and B, retired from business, selling his share and interest to a new firm (the remaining partners). Under the deed of dissolution he was to be paid off by weekly instalments. No such instalments have been made. All the debts save two of the old firm have been paid. The new firm has executed a deed of assignment for the benefit of its creditors. For the creditors it is contended that A is a " deferred creditor," and not entitled to claim anything until all the unsecured creditors of the new firm have been paid in full. Your opinion is requested as to whether such contention is correct or whether A can prove for the unpaid instalments. Is any distinction to be made in respect of chattels passing by delivery ?

A. A has sold a share in the goodwill, in consideration of a portion of the profits of the business, within the Partnership Act, 1890, s. 2 (3) (*e*). A cannot therefore recover anything, until the claims of the other creditors have been satisfied, in accordance with s. 3 of the above Act. The creditors' contention is therefore correct, and A cannot prove for the unpaid instalments. No distinction can be made in respect of chattels passing by delivery.

Inland Bill Changed to Foreign.

Q. 3032. A, who is indebted to B in the sum of £100, accepts a bill of exchange for this sum, payable in London, where both A and B reside, and carry on business. A hands the blank acceptance to B. B sends the blank acceptance to C, who resides and carries on business in Czechoslovakia, in settlement of a debt due from him, and C completes the bill by putting his town in Czechoslovakia as the place where the bill was drawn, and putting his own name to the bill as drawer. The bill is presented for payment to A and dishonoured, and A is now being sued for the proceeds of the bill. As between A and C there was no consideration. Has A any, and if so, what defences against C ? A gave B no express instructions as to the completion of the Bill when he handed him the document.

A. The insertion of the town in Czechoslovakia, as the place of drawing, appears to have been a material alteration, whereby the bill was avoided. A has therefore a good defence against C, on the authority of *Koch* v. *Dicks* [1933] 1 K.B. 307.

Liabilities of Lunatic Partner.

Q. 3083. Two brothers, A and B, have for some years carried on business in partnership. Each drew £3 a week and at the end of the year shared the profits equally. There have not yet been any losses, but clearly these must also be shared. Both brothers spent their whole time in the business. About two years ago A became certified as a lunatic, and is now in a mental home. B is running the business alone and doing much of A's work, but cannot do it all and has had to employ an assistant at £3 a week. Profits have fallen in the last year as a result of bad trade and of the additional wage. As a result both partners have been drawing very largely against capital but naturally A lives on much less than B. As a result B's capital will become exhausted long before A's and A will, fairly soon at the present rate, be entitled to all the cash capital of the firm in spite of the fact that B does all the work and the business suffers from A's absence. Can this properly be avoided in any way, e.g., by charging A with the wage of the man employed in his place, or by charging the firm with all or part of B's weekly drawings as a wage payable by the firm ? Application to the court would be too costly. No doubt the partnership could be dissolved by notice but that might prejudice A, and B is anxious not to do anything that might harm A if he recovers.

A. No objection can be taken to the debiting of A with the wage of the man employed in his place, as his substitute, and this appears to be the better solution of the difficulty. B cannot occupy the dual position of partner and employee, and his drawings cannot be regarded as wages.

Pre-1926 Intestacy—Tenant by the Curtesy being also Sole Administrator—Death of Curtesy Tenant—Position of Legal Estate—Sale by Co-heiresses.

Q. 3084. A woman who owned freehold property, died intestate in 1920, leaving a husband and two daughters. The husband obtained a grant of administration to the estate of his wife and received the rents of the freehold property during his life, and died in 1934, having made a will, which has been proved. Can the two daughters, who are still living, sell the property without any assent by the personal representatives of the husband. Succession duty is the only duty claimed by the Inland Revenue.

A. When the husband obtained the grant in his wife's estate the legal estate vested in him as administrator. On 1st January, 1926, by reason of his estate by the curtesy he also became a statutory owner (S.L.A., 1925, s. 20 (1) (vii) and s. 117 (1) (xxvi)), but the legal estate remained vested in him as personal representative (S.L.A., 1925, Sched. II, para. 2 ; L.P.A., 1925, Sched. I, Pt. II, paras. 3 and 6 (*c*)). The two daughters will not be in a position to sell until a grant *de bonis non* is obtained in the estate of their mother and the grantee has assented in their favour. There can be no implication of an assent by the father pre-1926, seeing that before 1926 an administrator could not pass a legal estate by an assent.

Liquidator and Mortgagee of Patent.

Q. 3085. A licence to manufacture and sell under patents at royalties was granted to a company in 1930. In 1934 the company went into voluntary liquidation. After the liquidation the patentee executed a mortgage over the patents, but no reference to the licence is made in the mortgage, but the licence was registered at the Patent Office. The only event upon which the licence can be revoked is for default in payment of royalties, and the licence contains specific power to grant sub-licences. Can the liquidator of the company effectively assign the licence or grant a sub-licence ? Presumably the mortgagees are bound by the licence ?

A. It is not stated that the liquidation has caused a default to be made in the payment of royalties, and the patentee has not purported to mortgage the patents free from the licence. The mortgagee would also have notice of the licence, in view of its having been registered. The licence is an asset of the company, and the liquidator can effectively assign it. It is doubtful whether a sub-licence would be valid, in view of the impending dissolution of the company, as licensee, and the title of a sub-licensee would not be secure. The mortgagees are bound by the licence, in view of the registration at the Patent Office.

To-day and Yesterday.

LEGAL CALENDAR.

26 NOVEMBER.—It has always been wiser not to shoot at the police. On the 26th November, 1851, two young gunmen were sentenced to death at the Old Bailey for wounding a police sergeant in the thigh, though the Lord Chief Justice intimated that they would be mercifully transported for life. The police, investigating a hold-up near Acton, found the two men masked and armed, and in the consequent struggle the shot was fired. One of the fellows was arrested, but the other got away, only to be caught trying to pass off a medal for a sovereign at Paddington Station.

27 NOVEMBER.—On the 27th November, 1835, the master and pilot of the steam boat "Royal Adelaide" stood in the Old Bailey dock charged with having caused the death of Thomas Clarkson, drowned when their boat ran down a small vessel called the "Fawn" in the Thames. At the time of the accident no one seems to have been keeping a look-out on board the "Royal Adelaide," but Mr. Baron Alderson stopped the case saying that, whatever the master's civil liability for the acts of his subordinates, there was no evidence of personal negligence on his part. Mr. Justice Park added that you might as well charge the owners.

28 NOVEMBER.—A century ago atheistical witnesses were most unpopular, to judge from a scene which occurred at the Old Bailey on the 28th November, 1833. Counsel: "Are you an atheist?" Witness: "Yes, sir, I am." Strong marks of disapprobation and disgust from all parts of the court followed this declaration. Counsel: "Go down, sir. I will not ask you a single question." The witness, with perfect nonchalance, replied: "Very well, sir," and left the box amidst loud hisses. Counsel, however, called him back, saying: "Perhaps, sir, you misunderstood the question. I hope you do not mean to say that you are an atheist?" But when the witness persisted, he cried: "Witness, I will not disgrace myself by asking you another question."

29 NOVEMBER.—On the 29th November, 1792, Sir David Dalrymple, Lord Hailes, died of apoplexy induced by sedentary habits. His life, uniformly prosperous, had been reflected in the placidity and quiet humour of his expression. He had been raised to the bench of the Court of Session in 1766, and ten years later had become a judge of the Justiciary Court. In Criminal cases he displayed a humanity contrasting with the callousness of most of his colleagues.

30 NOVEMBER.—On the 30th November, 1921, Landru, the French "Bluebeard," having been found guilty of the murder of eleven women whom he had fascinated and defrauded of their property, was sentenced to death at the Assizes at Versailles. After the verdict he was calm and dignified. "If I could have been saved, you would have done it," he said to his counsel. The crowd in court jostled one another to stare at him, and Maître Godefroy shouted: "Do you not realise that this man is going to his death?" To a bystander the prisoner said: "There is no battle without a death." To his judges he protested his innocence.

1 DECEMBER.—Philip Yorke, the son of an attorney, was born in Snargate Street, Dover, on the 1st December, 1690. He became Lord Chancellor Hardwicke.

2 DECEMBER.—On the 2nd December, 1843, a series of articles against the Duke of Brunswick, published in the "Age," had its sequel in a Queen's Bench trial for criminal libel. As Serjeant Talfourd said, the libels conveyed "a very abominable imputation in a dark and dastardly manner." They said that he was insensible to feminine charms, "and a particular meaning was given to common words by the use of italic type." It was said that when the Queen gave a State ball the Duke was not admitted beyond the servants' hall, with much more to the same effect. Wightman, J., summed up and the verdict was "Guilty."

THE WEEK'S PERSONALITY.

Philip Yorke was the son of a small Dover attorney. His father wished him to follow his own profession, but his mother, a rigid Presbyterian, would have preferred that he "should be put apprentice to some honester trade," and, in fact, cherished the ambition of making him a parson. However, the paternal plans prevailed, and young Philip was articled to Mr. Salkeld, his father's London agent, who carried on business in Brooke Street, Holborn. In the office he mixed with several young men destined to attain legal eminence, Parker, a future Chief Baron of the Exchequer, Jocelyn, afterwards Lord Chancellor of Ireland, and Strange, who became Master of the Rolls. Salkeld was much impressed by the abilities of his clerk and took every opportunity to advance him. He entered him as a student at the Middle Temple, and when Lord Chief Justice Parker asked if he could recommend a law tutor for his sons he immediately suggested the suitability of young Yorke. This was the beginning of the road to fortune, for removal from the office in Brooke Street to the commodious house in Lincoln's Inn Fields where the Chief Justice lived meant release from daily drudgery and opportunity to study and attend the courts. In 1715, the future Lord Chancellor Hardwicke was called to the Bar.

MEDICINE AND LAW.

Lord Sankey and Lord Horder were both guests at a recent dinner given by the Institute of Journalists, and the Lord Chancellor in the course of his speech shot one of those shafts which are the weapons in the friendly rivalry between the lawyers and the doctors, telling how he found in the index of a well-known text-book on the Workmen's Compensation Act the heading: "Funeral expenses—see Medical Attendance. From the same spirit sprang the story O'Connell used to tell of a physician who had been detained as a witness for several days at the Limerick Assizes and pressed to be allowed his expenses. The judge asked him on what ground he based his claim. "On the plea of my having suffered personal loss and inconvenience, my lord," he answered. "I have been kept away from my patients these five days and if I am kept here much longer how do I know but they'll get well." I forget the name of the barrister who by the observation that "The doctor's mistakes are buried six feet underground" provoked the medical retort that "lawyers' mistakes often swing in the air."

THE LIGHT THAT FAILED.

At the Kent Assizes recently, while a woman was being tried on a charge of administering poison to her infant son, the electric light failed just after the jury had retired. Candles were brought and by their dim flicker an acquittal was announced. The prisoner collapsed. An even more dramatic scene was once enacted at the Staffordshire Assizes forming a climax to a sensational murder trial. While the jury were considering their verdict the lights suddenly went out and for several minutes the court remained in complete darkness. Candles were brought in and as the jury returned an uncertain glimmer showed the silhouette of Mr. Justice Pickford's face and the outline of the prisoner standing in the dock. In grave tones the foreman announced a verdict of guilty and the judge, assuming the black cap, pronounced sentence of death in the semi-darkness. In another murder case in Devon the future Lord Coleridge was in the middle of his speech for the defence when the lights failed. They were soon re-lit. Continuing, he drew an analogy from the incident, reminding the jury: "It is in your power to extinguish the prisoner's life, but remember if you do so it can never under any circumstances be replaced."

Notes of Cases.

Judicial Committee of the Privy Council.

O'Connor *v.* Waldron.

Lord Atkin, Lord Tomlin, Lord Macmillan, Lord Wright and Sir Lancelot Sanderson. 8th November, 1934.

SLANDER, ALLEGED—CANADA—COMMISSIONER APPOINTED BY STATUTE—NATURE OF FUNCTIONS—NOT SIMILAR TO THOSE OF A COURT OF JUSTICE—NO ABSOLUTE PRIVILEGE—COMBINES INVESTIGATION ACT, 1927, R.S.C., c. 26.

This was an appeal by the plaintiff, Mr. William Francis O'Connor, a barrister-at-law of the Provinces of Ontario and Nova Scotia, from a judgment of the Supreme Court of Canada affirming a judgment of the First Appellate Division of the Supreme Court of Ontario, affirming a judgment of Orde, J.

The original judgment was given on a motion by the defendant, Mr. Gordon Waldron, a commissioner appointed by the Governor-General in Council under the Combines Investigation Act, 1927, R.S.C., c. 26, to dismiss the plaintiff's action for slander on the ground that it was frivolous and vexatious. The words of which the plaintiff complained included the following: "I say it is a thing any lawyer ought to be ashamed of. I do not care who he is. It is an outrageous, scandalous exhibition." The defendant admitted that he spoke the words, but alleged that he did so in his office of a commissioner while he was acting judicially, and that the speaking of them was absolutely privileged.

LORD ATKIN, in giving the judgment of the Board, said that their lordships were of opinion that the words uttered were not protected by absolute privilege, and the order dismissing the action would be set aside. Originally the law as to judicial privilege was intended for the protection of judges sitting in recognised courts of justice established as such. The doctrine had been extended to tribunals exercising functions equivalent to those of an established court of justice. In their lordships' opinion the law on the subject was accurately stated by Lord Esher in *Royal Aquarium* v. *Parkinson* [1892] 1 Q.B. 431, at p. 442. The question, therefore, in every case was whether the tribunal in question had similar attributes to a court of justice or acted in a manner similar to that in which a court of justice acted. That was of necessity a *differentia* which was not capable of very precise limitation. In their lordships' opinion a commissioner appointed under the Combines Investigation Act had not attributes similar to those of a court of justice. His conclusion was expressed in a report; it determined no rights, nor the guilt or innocence of anyone; it did not even initiate any proceedings, which had to be left to the ordinary criminal procedure. The defendant in the present case would be protected if he established that he spoke the words complained of on a privileged occasion, and the plaintiff failed to prove express malice. That was the measure of protection given to other administrative officers exercising similar duties, and their lordships knew of no legal principle which afforded any further or better protection. Appeal allowed, with costs.

COUNSEL: *A. T. Miller*, K.C., and *I. W. G. Barry*, for the appellant; *Ronald Smith* for the respondent.

SOLICITORS: *Bischoff, Coxe, Bischoff & Thompson; Blake and Redden.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Appeal.

In re Forshaw: Wallace *v.* Middlesex Hospital.

Lord Hanworth, M.R., Romer and Maugham, L.JJ. 13th November, 1934.

WILL—CONSTRUCTION—GIFT—CHARITABLE INSTITUTION—MISDESCRIPTION—ADDRESS SPECIFIED—INTENTION.

Appeal from a decision of Bennett, J. (78 SOL. J. 519).

A testator left property to "the Middlesex Children's Hospital, Middlesex Street, London, W." There was no Middlesex Children's Hospital, and in Middlesex Street, which was not in the "W." district, there was no hospital. The Middlesex Hospital, Mortimer Street, in which according to the evidence the testator had been interested, was held by Bennett, J., not to be entitled to the gift.

Lord HANWORTH, M.R., allowing the appeal, observed that though it was contended that the words "Middlesex Children's Hospital" were not a correct description of the Middlesex Hospital, even the latter words would not have been accurate, since, under the statute which incorporated it, a much more elaborate name was given. It was not solely a hospital for children, but a branch devoted to them had a special staff of nurses and doctors. In this case, the primary intention was to benefit a hospital, a charitable gift which the court would support if it could, and the use of the word "children" did not make it fail. The use of the words "Middlesex Street" seemed due to inadvertence (see *In re McGuire*, L.R. 6 Eq. 632). Here there was a clear intention to benefit the Middlesex Hospital, an existing institution, though inaccurately described.

ROMER and MAUGHAM, L.JJ., agreed.

COUNSEL: *A. E. J. Clark; A. G. Gordon; Pattisson; Andrewes Uthwatt*, for the Attorney-General.

SOLICITORS: *Breeze, Benton & Co.; Peake & Co.; Probyn, Dighton & Parkhouse; Treasury Solicitor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re South-East Lancashire Insurance Co., Limited.

Lord Hanworth, M.R., Romer and Maugham, L.JJ., 1st, 2nd and 22nd November, 1934.

INSURANCE — MOTOR-VEHICLES — CLAIMS ON STATUTORY DEPOSIT—CLASSES OF CREDITORS—ASSURANCE COMPANIES ACT, 1909 (9 Edw. 7, c. 49), ss. 3 and 32—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), ss. 32 and 42.

Appeal from a decision of Eve, J. (78 SOL. J., 256.)

The company carried on general insurance business and motor-vehicle insurance business. In 1931 it was ordered to be wound up. Eve, J., held that the £15,000 deposit made by it under the Assurance Companies Act, 1909, as amended by s. 42 of the Road Traffic Act, 1930, was primarily applicable in satisfaction of all claims under its motor-vehicle insurance policies, including third-party insurance policies.

Lord HANWORTH, M.R., allowing the appeal, said that the Road Traffic Act, in applying by s. 42 (2) the Assurance Companies Act to motor-vehicle business, left s. 32 (*d*) of that Act applicable to it as it was to accident insurance business. This conferred immunity from keeping separate funds. There was no segregation of one sort of risk undertaken in carrying on motor-vehicle insurance from any other sort, and third-party risks were included as risks which arose in connection with the use of motor vehicles. Section 43 of the Road Traffic Act only dealt with deposits made with the Accountant-General in respect of third-party risks in accordance with s. 35; s. 3 of the Assurance Companies Act, which required separate funds to be kept in respect of each class of insurance business, should not be construed so as to break up motor-vehicle insurance business into several categories, making third-party risks stand apart from others. Eve, J., was right in holding that they could not be so separated. As to the question whether the £15,000 should be held by the liquidator as part of the general assets of the company, s. 3 of the Assurance Companies Act which made a fund of any particular class absolutely the security of the policy-holders of that class, was not applicable to the motor-vehicle insurance business in respect of which there was no duty to keep separate funds. There was nothing to take this sum out of the reach of the general body of creditors, and the appeal must be allowed.

ROMER and MAUGHAM, JJ., agreed.

COUNSEL: *L. W. Byrne; Margary; L. W. Turner; Harman; Blain; Glyn-Jones.*

SOLICITORS: *Tamplin, Joseph, Ponsonby, Ryde & Flux; Stanley & Co.; J. P. Ayers; Stanley & Co.*, agents for *J. E. Dell & Loader*, of Brighton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Flint *v.* **Lovell.**

Greer, Slesser and Roche, L.JJ.
6th and 23rd November, 1934.

DAMAGES—ACCIDENT—SHORTENED LIFE—LOSS OF AN ENJOYABLE OLD AGE—APPEAL FROM JUDGE SITTING WITHOUT A JURY.

Appeal from a decision of Acton, J.

The plaintiff, whose age was sixty-nine, was seriously injured through the defendant's negligent driving. Acton, J., sitting without a jury, found that his life had been very materially shortened, that he would probably die within a year, being subject to much pain and suffering in that time, and that he had lost the prospect of an enjoyable, happy and vigorous old age. £4,000 damages were awarded, in addition to £400 special damages.

GREER, L.J., dismissing the appeal, said that the death of another did not give rise to a cause of action (see *Admiralty Commissioners* v. *SS. "Amerika"* [1917] A.C. 38; *Higgins* v. *Butcher*, Noy. 18; and *Baker* v. *Bolton*, 1 Camp. 493). The rule, however, did not apply to a plaintiff still living at the date of trial who claimed that what might have been a pleasant life of eight or ten years had been reduced to a precarious tenure, probably not exceeding one year. Under the rules with regard to the measure of damages laid down in *Hadley* v. *Baxendale*, 9 Ex. 341, the plaintiff should succeed. As to the jurisdiction of the Court of Appeal in questions of damages, the tests laid down in such cases as *Phillips* v. *London and South Western Railway Co.*, 5 C.P.D. 280, did not apply to an appeal from a judge sitting without a jury. To justify reversing him on a question of damages, it must appear that he acted on a wrong principle of law, or that the amount was so extremely high or low as to show an entirely erroneous estimate.

SLESSER, L.J., agreed and ROCHE, L.J., dissented.

COUNSEL: *Healy*, K.C., and *Fox-Andrewes; O'Sullivan*, K.C., and *G. Gardiner.*

SOLICITORS: *Joynson-Hicks & Co.; Wiley & Powles.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Pearce *v.* **Maryon-Wilson.**

Luxmoore, J. 6th November, 1934.

LANDLORD AND TENANT—BUILDING ESTATE—COVENANT NOT TO USE HOUSE OTHERWISE THAN AS A PRIVATE DWELLING-HOUSE—WAIVER OF RESTRICTIONS IN CASE OF OTHER LEASES—ALTERATION OF CHARACTER OF ESTATE.

The lessee of a plot of land and a house forming part of a building estate took a ninety-nine years' lease, subject to a covenant not to use the house as a school, hospital, sanatorium, place of reception for lunatics or persons of unsound mind, or shop, or otherwise than as a private dwelling-house, without the consent in writing of the lessor. Subsequently, the lessor granted leases waiving some of the restrictions. The lessee alleged that this altered the character of the estate and claimed an injunction to restrain the lessor from doing so.

LUXMOORE, J., in giving judgment, said that the covenant was in the widest possible form and gave the lessor unlimited power. It had been argued that he could only give consent where a radical alteration was not thereby effected. However, under the covenant, the lessor could grant or withhold consent as he chose and, even had the existence of a building scheme been proved, the plaintiff would have had no cause of action.

COUNSEL: *Simonds*, K.C., and *Fortune; Vaisey*, K.C., and *Danckwerts.*

SOLICITORS: *Ellis, Bickersteth & Co.; May, May & Deacon.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Waring *v.* **London and Manchester Assurance Co., Ltd.**

Crossman, J. 22nd November, 1934.

MORTGAGE—REGISTERED CHARGE—LEASEHOLD PROPERTIES—CONTRACT OF SALE BY MORTGAGEE—POSITION OF MORTGAGOR—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), s. 101.

The company was mortgagee of certain leasehold properties under a registered charge, dated the 12th July, 1929. The mortgage was for £180,000. In August, 1930, under its statutory power it appointed a receiver. Subsequently several attempts to sell the property came to nothing. A sale for £180,000 was then proposed. In July, 1934, the mortgagor had been informed of the negotiations. In August, he had been informed that the proposed purchaser was pressing for an immediate exchange of contracts. In September, he was informed that the company was proceeding with the sale and anticipated an exchange of contracts on the 1st October. On the 29th September, the mortgagor wrote that another company was willing to advance £200,000 on the security of the property and that as he was in a position to pay off the mortgage, there was no necessity for an exchange of contracts. Nevertheless, contracts were exchanged on the 3rd October. The mortgagor alleged that the company had acted recklessly and by this motion sought an injunction to restrain it from selling the property.

CROSSMAN, J., in giving judgment, said that the contract was not conditional, and was expressed to be made by the company as mortgagee. After a contract of sale a mortgagee could only be restrained from completing if he had entered into the contract in bad faith. The mortgagee had, under s. 101 of the L.P.A., 1925, power to bind the mortgagor. The contract in this case bound him, and it was too late for him to tender the mortgage money. On the evidence there was no lack of bona fides. The motion must be dismissed with costs.

COUNSEL: *Evershed*, K.C., and *Vanneck; Gover*, K.C., and *Greenland; R. Goff; G. D. Johnston.*

SOLICITORS: *Biddle, Thorne, Welsford & Gait; W. H. Mathews & Co.; Hicks, Arnold & Bender; Joynson Hicks and Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Rex *v.* **Proprietor, Printer, and Publishers of the "Daily Worker"; *ex parte* Goulding and Others.**

Rex *v.* **Editors, Printers, and Publishers of the "Star," "Daily Telegraph," and "New Leader"; *ex parte* Goulding and Others.**

Lord Hewart, C.J., Avory and Branson, JJ.
9th November, 1934.

CONTEMPT OF COURT—TRIAL PENDING—NEWSPAPER REPORT—INACCURATE—ALLEGED PREJUDICE—ATTACHMENT FOR CONTEMPT NOT JUSTIFIED.

These rules *nisi* for orders for attachment for alleged contempt of court had been obtained against the proprietor, printer and publishers of the *Daily Worker*, and the editors, printers and publishers of the *Star*, the *Daily Telegraph*, and the *New Leader*. The rules were obtained at the instance of Michael Joseph Goulding and three other men belonging to the British Union of Fascists, who were under remand on charges at Plymouth Police Court of assault, committing a

breach of the peace; and, in the case of one of them, with incitement to commit a breach of the peace. The men complained that whereas, in opening the police court proceedings, the Chief Constable for Devon merely stated that when they were examined at the police station it was found that the knuckles of each of them were heavily bound with insulating tape and that they were also wearing metal protectors for the body, the respondent newspapers published reports in which it was stated that the men were wearing knuckledusters.

Lord HEWART, C.J., said that the principles applicable to a case of this nature were set out in *Reg.* v. *Payne* [1896] 1 Q.B. 577. The applicant must show that something had been published which either was intended, or at least was calculated, to prejudice a trial which was pending. Applying the canons laid down in the judgment of Lord Russell in *Reg.* v. *Payne, supra*, to the present group of cases, he (the Lord Chief Justice) thought that, although it might be true to say that what had been published might be technically a contempt of court, it was not such a contempt as to justify the court in interfering by summary and arbitrary process of attachment. It was not suggested here that there was any deliberate intention on the part of any of the newspapers concerned to prejudice the trial of the men who were about to be tried. The explanations which had been offered showed that what had happened was a mere error, dependent, perhaps, on something which turned on the grammatical construction of an imperfectly reported sentence. All the rules would be discharged, without costs.

AVORY and BRANSON, JJ., agreed.

COUNSEL: *Dudley Collard* showed cause on behalf of the *Daily Worker*; *Norman Birkett*, K.C., and *Valentine Holmes* showed cause for the *Star*; *Norman Birkett*, K.C., and *Wilfrid Lewis* showed cause for the *Daily Telegraph*; *D. A. S. Cairns* for the *New Leader*; *St. John Hutchinson* and *W. Fearnley-Whittingstall* supported the rules.

SOLICITORS: *W. H. Thompson*; *Lewis & Lewis*; *Alfred Cox & Sons*; *J. Gaster*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Peterborough Trust, Ltd. *v.* Steel Industries of Great Britain, Ltd.

MacKinnon, J. 9th November, 1934.

COMPANY—LOAN—ALLOTMENT LETTERS AS SECURITY—LOAN NOT REPAID—CLAIM TO REGISTRATION AS OWNERS—AUTHORITY OF COMPANY'S SECRETARY.

The plaintiffs in this action, Peterborough Trust, Ltd., claimed a declaration that they were entitled to be registered in the books of the defendant company, Steel Industries of Great Britain, Ltd., as holders of 25,000 6½ per cent. cumulative preference shares of £1 each, fully paid, and 10,000 "A" ordinary shares of £1 each, fully paid, in the defendant company; rectification of the register of the defendant company by entering the name of the plaintiffs as holders of the said shares; damages for alleged wrongful refusal to register; and, alternatively, damages for alleged negligence. The case arose out of the Hatry financial transactions in 1929. The plaintiffs had lent sums amounting in all to £35,000 to Austin Friars Trust, one of the Hatry companies, and had received from that company by way of security for the loan allotment letters for the above-mentioned shares in the defendant company. The Austin Friars Trust went into liquidation without having repaid the loan to the plaintiffs, and the plaintiffs lodged the allotment letters with the defendants and claimed to be registered as owner of the shares to which the letters related. The defendants refused to register the plaintiffs as owners of the shares on the ground that the allotment letters had been issued without the knowledge or authority of the directors by a Mr. Bland, who was then the secretary of the defendant company.

MACKINNON, J., said that the question was whether the principle laid down in *Whitechurch: George Whitechurch, Ltd.* v. *Cavanagh* [1902] A.C. 117, and subsequently applied in *Kleinwort, Sons, and Co. and Others* v. *Associated Automatic Machine Corporation, Ltd.*, 50 T.L.R. 244, governed this case. He did not think that it did. Some allotment letters issued by the secretary had been good and some bad, and there was nothing on the face of them to distinguish the good from the bad. Mr. Bland was actually authorised to issue allotment letters, and his action in doing so was within both his actual and his ostensible authority. He had, indeed, no authority to issue letters which had not been authorised by the directors, but there was nothing which ought to have intimated to the plaintiffs as reasonable men that his authority was thus limited. The defendants were therefore estopped from denying the validity of the letters relied on by the plaintiffs, and must allot the required shares if such shares were still available, or, if they were not, must pay damages. Mr. Bland might have been careless, but there was nothing to suggest that he was a rogue. A stay was granted.

COUNSEL: *Sir William Jowitt*, K.C., *Harold Murphy*, and *Devlin*, for the plaintiffs; *Stuart Bevan*, K.C., *Spens*, K.C., *Evershed*, K.C., and *Gresham Cooke*, for the defendants.

SOLICITORS: *Langton & Passmore*; *Bischoff, Coxe, Bischoff and Thompson*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Reviews.

The Solicitors' Diary, Almanac and Legal Directory, 1935. Edited by R. W. D. Sandford, B.A., Solicitor. Demy 8vo. London: Waterlow & Sons, Ltd. Cloth gilt, 8s. net. Half bound, law calf, 10s., 12s. 6d., and 15s. net.

The Solicitors' Diary for 1935, in its ninety-first year of publication, contains nearly 900 pages of useful information in addition to the diary portion. There are treatises on the Stamp Act and on estate, succession and legacy duties, tables of costs, lists of county courts, recorders, town clerks, clerks of the peace, coroners, under-sheriffs, King's Counsel, etc. A valuable section of the directory is that containing lists of London and provincial Barristers-at-Law and of London and country solicitors, with appointments held by them. The addresses of many of the country solicitors, in addition to those of all the London solicitors, are given in full.

Books Received.

The Law of Damages. By S. Jackson, B.A. (Oxon), LL.B. (Lond.) 1934. Demy 8vo. pp. xvi and (with Index) 135. London: Stevens & Sons, Ltd. 6s. net.

Fresh Fields for Investment. By Ralph Curtis, M.Sc. (Econ.), and F. B. Winham. 1934. Crown 8vo. pp. 188. London: Jordan & Sons, Ltd. 5s. net.

Michael and Will on the Law relating to Gas and Water. In Two Volumes. Vol. II—Water. Eighth Edition, 1935. By the late F. T. Villiers Bayly, of the Middle Temple, Barrister-at-Law, and Harold I. Willis, B.A., B.C.L., of the Middle Temple, Barrister-at-Law. Royal 8vo. pp. cxiii and (with Index) 849. London: Butterworth and Co. (Publishers) Ltd. £3 3s. net.

Cordery's Law relating to Solicitors. Fourth Edition, 1935. By J. T. Edgerley, M.A., of the Inner Temple, Barrister-at-Law. Royal 8vo. pp. lxxi and (with Index) 675. London: Butterworth & Co. (Publishers) Ltd. £2 5s. net.

Solicitors' Accounts. By W. F. Whelan, B.Com. 1934. Demy 8vo. pp. (with Index) 74. London: Gee & Co. (Publishers) Ltd. 5s. net.

The Principles and Practice of Conveyancing under the Land Registration Act, 1925. By Harold Potter, LL.B., Solicitor of the Supreme Court. 1934. Royal 8vo. pp. xxxii and (with Index) 484. London: Sweet & Maxwell, Ltd. 30s. net.

Parliamentary News.

Progress of Bills.

House of Lords.

Industrial Reorganisation (Enabling) Bill.
Read First Time. [22nd November.

Judiciary (Safeguarding) Bill.
Read Second Time. [28th November.

Registration and Regulation of Osteopaths Bill.
Read First Time. [28th November.

House of Commons.

Depressed Areas (Development and Improvement) Bill.
Read First Time. [26th November.

Questions to Ministers.

KING'S BENCH DIVISION (ROYAL COMMISSION).

Mr. Lansbury (by Private Notice) asked the Prime Minister whether any steps have been taken to set on foot the inquiry into the state of business in the King's Bench Division promised at the end of last Session, and, if so, what form the inquiry will take, what will be the terms of reference and what will be the membership of the commission.

The Prime Minister: The King has been pleased to approve the setting up of a Royal Commission to inquire into this matter. The terms of reference are:—

"To inquire into the state of business in the King's Bench Division of the High Court of Justice and to report whether, with a view to greater despatch, any reforms should be adopted, and in particular what is the judicial strength required to deal with the business, whether there should be any further fusion or further sub-division of the divisions of the Supreme Court, whether any alterations should be made in the Circuits of the Judges, whether any further measure should be taken for the devolution of work from the High Court to the County Court, and whether a retiring age should be imposed upon those appointed in the future to the Bench of the Supreme Court."

The members of the commission will be:—

The Earl Peel (Chairman).
Lord Hanworth.
Mr. J. G. Archibald.
My hon. Friend the Member for Montgomery (Mr. Clement Davies).
Mr. W. T. Monckton.
Mr. H. L. Murphy.
Sir Claud Schuster.

[27th November.

HIS MAJESTY'S JUDGES.

Mr. A. Bevan asked the Prime Minister whether he proposes to table proposals for the fixing of a compulsory retirement age for His Majesty's judges.

The Prime Minister: His Majesty's Government propose to refer this question, amongst others, for the consideration of those undertaking the investigation to which my right hon. and learned Friend referred on 1st November last.

[22nd November.

Rules and Orders.

The Road Traffic Act, 1934 (Date of Commencement) Order (No. 3), 1934, dated November 14, 1934, made by the Minister of Transport.

Whereas by Sub-section (3) of Section 42 of the Road Traffic Act, 1934,* (hereinafter called "the Act"), it is enacted that the Act shall come into operation on such day or days as the Minister of Transport may appoint, and the Minister may fix different days for different purposes and different provisions of the Act.

Now, therefore, the Minister of Transport in the exercise of the powers so conferred upon him and of all other powers enabling him in that behalf hereby appoints and orders as follows:—

(1) The provisions of the Act specified in the First Column of the First Schedule hereto shall come into operation for the purposes specified in the Second Column thereof on the first day of December one thousand nine hundred and thirty-four.

(*) 24-5 G. 5. c. 50.

(2) The provisions of the Act specified in the First Column of the Second Schedule hereto shall come into operation for the purposes specified in the Second Column thereof on the first day of January one thousand nine hundred and thirty-five.

(3) The Interpretation Act, 1889,† applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

(4) This Order may be cited as "The Road Traffic Act, 1934 (Date of Commencement) Order (No. 3), 1934."

THE SCHEDULES.

FIRST SCHEDULE.

Provisions of the Act.	Purposes for which provisions are to be brought into operation.
Part IV.	
Section 25	For all purposes.
Section 26	
Section 30	

SECOND SCHEDULE.

Provisions of the Act.	Purposes for which provisions are to be brought into operation.
Part I.	
Sub-sections (3) to (10) (both inclusive) of Section 1.	For all purposes.
Part II.	
Sections 10 to 17 (both inclusive)	For all purposes.
Part IV.	
Sub-section (2) of Section 32	For all purposes relating to licences to drive or act as conductor of a public service vehicle.
Part V.	
Section 39	For all purposes.
Section 40 and the Third Schedule	For the purpose of amending Sub-section (1) of Section 80 of the Principal Act.

Given under the Seal of the Minister of Transport this fourteenth day of November, 1934.

(L.S.) 7492
A.D.E.

Robert H. Tolerton,
An Assistant Secretary.

(†) 52-3 V. c. 63.

Societies.

The Hardwicke Society.

A meeting of the Society was held on Friday, 23rd November, at 8 p.m., in the Middle Temple Common Room, the President (Mr. A. Newman Hall) in the chair. Mr. A. P. McNabb moved: "That this House welcomes the Government's proposals for dealing with the problem of the depressed areas." The Hon. F. P. Howard opposed. There also spoke Mr. Menzies, Mr. Sturge, Mr. A. Newman Hall, Mr. Burrell, Mr. Llewellyn Thomas, Mr. Sweeney. The hon. mover having replied, the House divided, and the motion was carried by five votes.

United Law Society.

A meeting of the United Law Society was held on the 26th November in the Middle Temple Common Room. Mr. S. A. Gibbons proposed: "That the Statute of Frauds, 1677, s. 4, the Sale of Goods Act, 1894, s. 4, and the Law of Property Act, 1925, s. 40, should be repealed." Mr. L. C. B. Gower opposed. Messrs. J. H. Menzies, T. R. Owens, O. T. Hill, S. A. Redfern, G. B. Burke, and R. J. Kent spoke, and Mr. Gibbons replied. The house being equally divided the chairman gave his casting vote against the motion.

Hampshire Incorporated Law Society.

THE FORD SCHEME.

The Trustees of the Ford Scheme, which was founded by the late Charles Ford and which provides for an award to be made each year to the articled clerk who, having been articled in Hampshire, shall, in the opinion of the trustees on the result of the Solicitors' Final Examination in that year, be the most worthy of the clerks who have been so articled to hold the same, have made their award for the year 1933-34 to Mr. B. L. Bremridge, articled to Mr. C. E. Godwin, solicitor, of Winchester, who obtained second class honours in the June law examinations.

Mr. Bremridge has now joined Mr. Godwin in partnership.

Mr. Bremridge has also been awarded the Hampshire Incorporated Law Society's annual prize.

Special prizes have likewise been awarded to Mr. W. H. D. Crawford, articled to Mr. A. G. Glanville, solicitor, of Portsmouth, and Mr. R. Bowyer, articled to Mr. C. F. Hiscock, solicitor, of Southampton, both of whom obtained third class honours during the year.

The Solicitors' Managing Clerks' Association.

The annual festival dinner of the Solicitors' Managing Clerks' Association will be held at the Wharncliffe Rooms, Hotel Great Central, N.W., on Thursday, 6th December, at 6.45 for 7 o'clock.

Legal Notes and News.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to appoint Mr. DANIEL PATERSON BLADES, K.C., Sheriff of Forfar and Interim Sheriff of Perth, to be Sheriff of the Sheriffdom of Perth and Angus as constituted by the Sheriffdom of Perth and Angus Order, 1934, made under s. 31 of the Administration of Justice (Scotland) Act, 1933.

The Lord Chancellor has appointed Mr. BRUCE HUMFREY to be the Registrar of Croydon County Court as from the 19th November, 1934.

Sir LYNDEN L. MACASSEY, K.B.E., K.C., LL.D., has been elected Treasurer of the Middle Temple for the ensuing year.

LORD HANWORTH (Master of the Rolls) has been elected Reader of the Inner Temple for the Lent Vacation.

Mr. A. M. LANGDON, K.C., has been elected Treasurer of the Inner Temple for the year 1935.

Mr. C. B. MARRIOTT, K.C., Mr. F. J. WROTTESLEY, K.C., and The Hon. VICTOR RUSSELL have been elected Masters of the Bench of the Inner Temple.

Mr. A. R. HERBERT, solicitor, of Smethwick, has been appointed Assistant Solicitor to Smethwick Corporation. Mr. Herbert was admitted a solicitor in 1932.

Mr. J. B. W. BARRACLOUGH, LL.B., solicitor, Assistant to the Derby Corporation, has been appointed Second Assistant Solicitor at Coventry. Mr. Barraclough was admitted a solicitor in 1930.

Professional Announcements.

(2s. per line.)

Messrs. STONEHAM & SONS, Solicitors, of 108A, Cannon-street, E.C.4, announce that as from the 1st November they have taken into partnership Mr. ROBERT THOMPSON STONEHAM, a son of their senior partner, Mr. R. T. D. Stoneham, and great-grandson of Mr. R. T. Stoneham who joined the firm some 70 years ago. The name of the firm will remain unchanged.

VALUE OF THE CITY OF LONDON.

The new total value of the City of London which comes into force in April, 1935, is (subject to appeals) £11,244,468 gross, and £8,946,725 rateable. The Inner Temple is £31,942 gross, and £23,905 rateable, and the Middle Temple £23,720 gross, and £17,889 rateable. This is a total of £11,300,130 gross, and £8,988,519 rateable, an increase of £121,839 gross, and £85,578 rateable.

OFFICES OF THE SUPREME COURT.

The Lord Chancellor announces that the offices of the Supreme Court will be closed on Monday, the 24th December, 1934.

COMMISSIONERS OF ASSIZE.

The number of Commissioners of Assize appointed by the Lord Chancellor during the year ended 31st July, 1934, and the cost of such appointments were as follows :—

Date.	Number appointed.	Circuit.
1933.		
Autumn	One	South Wales.
	One	Western.
	One	Midland.
1934.		
Winter	One	North Eastern.
	One	Midland.
Summer	One	North Wales and Chester.
	One	South Eastern.

The total amount of fees paid to the Commissioners of Assize and their clerks was £2,522 13s. The extra expenditure for travelling and subsistence allowances and for fees for marshals was £71 10s.

JUVENILE DELINQUENCY IN THE BRITISH EMPIRE.

A meeting of the Empire Social Services' Group of the Royal Empire Society was held on Thursday, 22nd November, with Miss Margaret Baxter in the chair. Miss C. M. Craven, Hon. Secretary of the Howard League, detailing the progress made in the colonies in the matter of the treatment of young offenders, said that while real progress on the lines of the draft Model Ordinance circulated by the Colonial Office in 1930 had been made in some colonies, e.g., Kenya, Bahamas, Barbados, Bermuda, British Guiana, British Honduras, and to a lesser extent in the Windward Isles, Malta and Tanganyika, some colonies had up to July, 1934, made no recorded progress at all. Financial stringency had been pleaded in many cases where no progress was reported.

Mr. Clifton Roberts, late Acting Attorney-General in Kenya, urged that the truest economy was the production of citizens, self-respecting and economically useful. Recidivism, he said, was one of the main causes of full prisons.

Lieutenant-Colonel W. Hancock, Salvation Army, spoke with thirty years' practical experience in Ceylon, India and Burma, of the work of the Salvation Army in juvenile reclamation there.

A vote of thanks to the speakers was moved by Dr. Drummond Shiels, who recalled how, when at the Colonial Office, he was appalled to read of the case from one of the colonies of a young boy who had been condemned on a minor offence and whose punishment revealed so much misunderstanding of sane citizenship as to have been largely responsible for the Model Ordinance ultimately issued.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Group I. Mr. Justice Eve. Witness. Part I.	Mr. Justice Bennett. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Dec. 3	Blaker	Andrews	*Jones	*Blaker
„ 4	More	Jones	*Hicks Beach	Jones
„ 5	Hicks Beach	Ritchie	*Blaker	*Hicks Beach
„ 6	Andrews	Blaker	*Jones	Blaker
„ 7	Jones	More	Hicks Beach	*Jones
„ 8	Ritchie	Hicks Beach	Blaker	Hicks Beach
	Group I. Mr. Justice Crossman. Non-Witness.	Mr. Justice Clauson. Non-Witness.	Group II. Mr. Justice Luxmoore. Witness. Part II.	Mr. Justice Farwell. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
„ 3	Hicks Beach	Ritchie	Andrews	*More
„ 4	Blaker	Andrews	*More	*Ritchie
„ 5	Jones	More	Ritchie	*Andrews
„ 6	Hicks Beach	Ritchie	*Andrews	More
„ 7	Blaker	Andrews	More	*Ritchie
„ 8	Jones	More	Ritchie	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 6th December, 1934.

	Div. Months.	Middle Price 28 Nov. 1934.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	117⅛	3 8 1	2 18 2
Consols 2½%	JAJO	89	2 16 2	—
War Loan 3½% 1952 or after ..	JD	107¼	3 5 3	2 19 6
Funding 4% Loan 1960-90	MN	118⅛	3 7 6	2 18 10
Funding 3% Loan 1959-69	AO	103¼	2 18 1	2 16 4
Victory 4% Loan Av. life 29 years ..	MS	116⅛	3 8 8	3 2 6
Conversion 5% Loan 1944-64 ..	MN	123½	4 1 0	2 1 9
Conversion 4½% Loan 1940-44 ..	JJ	113xd	3 19 8	2 2 11
Conversion 3½% Loan 1961 or after..	AO	109¼	3 4 1	2 19 8
Conversion 3% Loan 1948-53 ..	MS	104¼	2 17 6	2 12 3
Conversion 2½% Loan 1944-49 ..	AO	100⅛	2 9 9	2 8 10
Local Loans 3% Stock 1912 or after..	JAJO	96⅝	3 2 1	—
Bank Stock	AO	381½	3 2 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	92	2 19 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3 2 6	—
India 4½% 1950-55	MN	113	3 19 8	3 7 8
India 3½% 1931 or after	JAJO	96⅛	3 12 6	—
India 3% 1948 or after	JAJO	87½	3 8 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	125	3 12 0	3 2 5
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 15 0
Tanganyika 4% Guaranteed 1951-71	FA	116	3 9 0	2 15 0
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102	2 18 10	2 16 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	113	3 19 8	2 9 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 5 4
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104xd	3 12 1	3 7 8
Canada 4% 1953-58	MS	113	3 10 10	3 1 9
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50 ..	JJ	102	3 8 8	—
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
Nigeria 4% 1963	AO	112	3 11 5	3 7 0
Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 7
South Africa 3½% 1953-73	JD	107	3 5 5	3 0 2
*Victoria 3½% 1929-49	AO	102	3 8 8	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106	3 6 0	3 1 3
*Hull 3½% 1925-55	FA	102	3 8 8	—
Leeds 3% 1927 or after	JJ	97	3 1 10	—
Liverpool 3½% Redeemable by agreement with holders or by purchase .	JAJO	108	3 4 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	88½	2 16 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after ..	FA	98	3 1 3	—
*Metropolitan Consd. 2½% 1920-49..	MJSD	100	2 10 0	2 10 0
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3 1 10	3 2 1
Do. do. 3% "B" 1934-2003 ..	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73 ..	JJ	102	2 18 10	2 17 2
Middlesex County Council 4% 1952-72	MN	113	3 10 10	3 1 0
† Do. do. 4½% 1950-70 ..	MN	116	3 17 7	3 4 1
Nottingham 3% Irredeemable ..	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	107	3 5 5	3 3 2
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture ..	JJ	126½	3 11 2	—
Gt. Western Rly. 5% Debenture ..	JJ	133½	3 14 11	—
Gt. Western Rly. 5% Rent Charge ..	FA	132½	3 15 6	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	130½	3 16 8	—
Gt. Western Rly. 5% Preference ..	MA	115	4 6 11	—
Southern Rly. 4% Debenture ..	JJ	115	3 9 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3 11 1	3 6 2
Southern Rly. 5% Guaranteed ..	MA	131½	3 16 1	—
Southern Rly. 5% Preference ..	MA	116	4 6 2	—

*Not available to Trustees over par. † Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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Volume 78 (Part I) closed on 30th June.
The INDEX was published with the issue of 7th July.

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